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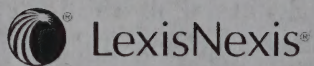
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TITLE 9

FAMILY LAW

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SUBTITLE 3. MINORS

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SUBCHAPTER 3 — ARKANSAS JUVENILE CODE

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9-27-303. Definitions.

As used in this subchapter:

(1) “Abandoned infant” means a juvenile less than nine (9) months of age whose parent, guardian, or custodian left the child alone or in the possession of another person without identifying information or with an expression of intent by words, actions, or omissions not to return for the infant;

(2)(A) “Abandonment” means:

(i) The failure of the parent to provide reasonable support for a juvenile and to maintain regular contact with a juvenile through statement or contact when the failure is accompanied by an intention on the part of the parent to permit the condition to continue for an indefinite period in the future;

(ii) The failure of a parent to support or maintain regular contact with a child without just cause; or

(iii) An articulated intent to forego parental responsibility.

(B) "Abandonment" does not include a situation in which a child has disrupted his or her adoption and the adoptive parent has exhausted the available resources;

(3)(A) "Abuse" means any of the following acts or omissions by a parent, guardian, custodian, foster parent, person eighteen (18) years of age or older living in the home with a child, whether related or unrelated to the child, or any person who is entrusted with the juvenile's care by a parent, guardian, custodian, or foster parent, including, but not limited to, an agent or employee of a public or private residential home, childcare facility, public or private school, or any person legally responsible for the juvenile's welfare:

(i) Extreme or repeated cruelty to a juvenile;

(ii) Engaging in conduct creating a realistic and serious threat of death, permanent or temporary disfigurement, or impairment of any bodily organ;

(iii) Injury to a juvenile's intellectual, emotional, or psychological development as evidenced by observable and substantial impairment of the juvenile's ability to function within the juvenile's normal range of performance and behavior;

(iv) Any injury that is at variance with the history given;

(v) Any nonaccidental physical injury;

(vi) Any of the following intentional or knowing acts, with physical injury and without justifiable cause:

(a) Throwing, kicking, burning, biting, or cutting a child;

(b) Striking a child with a closed fist;

(c) Shaking a child; or

(d) Striking a child on the face;

(vii) Any of the following intentional or knowing acts, with or without physical injury:

(a) Striking a child six (6) years of age or younger on the face or head;

(b) Shaking a child three (3) years of age or younger;

(c) Interfering with a child's breathing;

(d) Urinating or defecating on a child;

(e) Pinching, biting, or striking a child in the genital area;

(f) Tying a child to a fixed or heavy object or binding or tying a child's limbs together;

(g) Giving a child or permitting a child to consume or inhale a poisonous or noxious substance not prescribed by a physician that has the capacity to interfere with normal physiological functions;

(h) Giving a child or permitting a child to consume or inhale a substance not prescribed by a physician that has the capacity to alter the mood of the child, including, but not limited to, the following:

(1) Marijuana;

(2) Alcohol, excluding alcohol given to a child during a recognized and established religious ceremony or service;

(3) Narcotics; or

(4) Over-the-counter drugs if a person purposely administers an overdose to a child or purposely gives an inappropriate over-the-

counter drug to a child and the child is detrimentally impacted by the overdose or over-the-counter drug;

(i) Exposing a child to chemicals that have the capacity to interfere with normal physiological functions, including, but not limited to, chemicals used or generated during the manufacturing of methamphetamine; or

(j) Subjecting a child to Munchausen syndrome by proxy, also known as "factitious illness by proxy", when reported and confirmed by medical personnel or a medical facility; or

(viii) Recruiting, harboring, transporting, or obtaining a child for labor or services, through force, fraud, or coercion for the purpose of subjection to involuntary servitude, peonage, debt bondage, or slavery.

(B)(i) The list in subdivision (3)(A) of this section is illustrative of unreasonable action and is not intended to be exclusive.

(ii) No unreasonable action shall be construed to permit a finding of abuse without having established the elements of abuse.

(C)(i) "Abuse" shall not include:

(a) Physical discipline of a child when it is reasonable and moderate and is inflicted by a parent or guardian for purposes of restraining or correcting the child; or

(b) Instances when a child suffers transient pain or minor temporary marks as the result of a reasonable restraint if:

(1) The person exercising the restraint is an employee of a residential childcare facility licensed or exempted from licensure under the Child Welfare Agency Licensing Act, § 9-28-401 et seq.;

(2) The person exercising the restraint is acting in his or her official capacity while on duty at a residential childcare facility or the residential childcare facility is exempt from licensure under the Child Welfare Agency Licensing Act, § 9-28-401 et seq.;

(3) The agency has policies and procedures regarding restraints;

(4) Other alternatives do not exist to control the child except for a restraint;

(5) The child is in danger of hurting himself or herself or others;

(6) The person exercising the restraint has been trained in properly restraining children, de-escalation, and conflict resolution techniques; and

(7) The restraint is:

(A) For a reasonable period of time; and

(B) In conformity with training and agency policy and procedures.

(ii) Reasonable and moderate physical discipline inflicted by a parent or guardian shall not include any act that is likely to cause and that does cause injury more serious than transient pain or minor temporary marks.

(iii) The age, size, and condition of the child and the location of the injury and the frequency or recurrence of injuries shall be considered when determining whether the physical discipline is reasonable or moderate;

(4) "Adjudication hearing" means a hearing to determine whether the allegations in a petition are substantiated by the proof;

(5) "Adult sentence" means punishment authorized by the Arkansas Criminal Code, § 5-1-101 et seq., subject to the limitations in § 9-27-507, for the act or acts for which the juvenile was adjudicated delinquent as an extended juvenile jurisdiction offender;

(6) "Aggravated circumstances" means:

(A) A child has been abandoned, chronically abused, subjected to extreme or repeated cruelty, sexually abused, sexually exploited, or a determination has been or is made by a judge that there is little likelihood that services to the family will result in successful reunification;

(B) A child has been removed from the custody of the parent or guardian and placed in foster care or in the custody of another person three (3) or more times in the last fifteen (15) months; or

(C) A child or a sibling has been neglected or abused such that the abuse or neglect could endanger the life of the child;

(7) "Attorney ad litem" means an attorney appointed to represent the best interest of a juvenile;

(8) "Caretaker" means a parent, guardian, custodian, foster parent, significant other of the child's parent, or any person fourteen (14) years of age or older who is entrusted with a child's care by a parent, guardian, custodian, or foster parent, including, but not limited to, an agent or employee of a public or private residential home, childcare facility, public or private school, or any person responsible for a child's welfare;

(9) "Case plan" means a document setting forth the plan for services for a juvenile and his or her family, as described in § 9-27-402;

(10)(A) "Cash assistance" means short-term financial assistance.

(B) "Cash assistance" does not include:

(i) Long-term financial assistance or financial assistance that is the equivalent of the board payment, adoption subsidy, or guardianship subsidy; or

(ii) Financial assistance for car insurance;

(11) "Commitment" means an order of the court that places a juvenile in the physical custody of the Division of Youth Services for placement in a youth services facility;

(12) "Court" means the juvenile division of circuit court;

(13) "Court-appointed special advocate" means a volunteer appointed by the court to advocate for the best interest of juveniles in dependency-neglect proceedings;

(14)(A) "Custodian" means a person other than a parent or legal guardian who stands in loco parentis to the juvenile or a person, agency, or institution to whom a court of competent jurisdiction has given custody of a juvenile by court order.

(B) For the purposes of who has a right to counsel under § 9-27-316(h), "custodian" includes a person to whom a court of competent jurisdiction has given custody, including a legal guardian;

(15) "Delinquent juvenile" means:

(A) A juvenile ten (10) years old or older who:

(i) Has committed an act other than a traffic offense or game and fish violation that, if the act had been committed by an adult, would subject the adult to prosecution for a felony, misdemeanor, or violation under the applicable criminal laws of this state;

(ii) Has violated § 5-73-119; or

(iii) Has violated § 5-71-217(d)(2), cyberbullying of a school employee; or

(B) Any juvenile charged with capital murder, § 5-10-101, or murder in the first degree, § 5-10-102, subject to extended juvenile jurisdiction;

(16) "Dependent juvenile" means:

(A)(i) A child whose parent or guardian is incarcerated and the parent or guardian has no appropriate relative or friend willing or able to provide care for the child.

(ii) If the reason for the incarceration is related to the health, safety, or welfare of the child, the child is not a dependent juvenile but may be dependent-neglected;

(B) A child whose parent or guardian is incapacitated, whether temporarily or permanently, so that the parent or guardian cannot provide care for the juvenile and the parent or guardian has no appropriate relative or friend willing or able to provide care for the child;

(C) A child whose custodial parent dies and no appropriate relative or friend is willing or able to provide care for the child;

(D) A child who is an infant relinquished to the custody of the Department of Human Services for the sole purpose of adoption;

(E) A safe haven baby, § 9-34-201 et seq.;

(F) A child who has disrupted his or her adoption, and the adoptive parents have exhausted resources available to them; or

(G)(i) A child who has been a victim of human trafficking.

(ii) If the parent knew or should have known the child was a victim of human trafficking, the child is not a dependent juvenile but may be dependent-neglected;

(17)(A) "Dependent-neglected juvenile" means any juvenile who is at substantial risk of serious harm as a result of the following acts or omissions to the juvenile, a sibling, or another juvenile:

(i) Abandonment;

(ii) Abuse;

(iii) Sexual abuse;

(iv) Sexual exploitation;

(v) Neglect;

(vi) Parental unfitness; or

(vii) Being present in a dwelling or structure during the manufacturing of methamphetamine with the knowledge of his or her parent, guardian, or custodian.

(B) "Dependent-neglected juvenile" includes dependent juveniles;

(18) "Detention" means the temporary care of a juvenile in a physically restricting facility other than a jail or lock-up used for the detention of adults prior to an adjudication hearing for delinquency or pending commitment pursuant to an adjudication of delinquency;

(19) "Detention hearing" means a hearing held to determine whether a juvenile accused or adjudicated of committing a delinquent act or acts should be released or held prior to adjudication or disposition;

(20) "Deviant sexual activity" means any act of sexual gratification involving:

(A) Penetration, however slight, of the anus or mouth of one (1) person by the penis of another person; or

(B) Penetration, however slight, of the labia majora or anus of one (1) person by any body member or foreign instrument manipulated by another person;

(21) "Disposition hearing" means a hearing held following an adjudication hearing to determine what action will be taken in delinquency, family in need of services, or dependency-neglect cases;

(22) "Extended juvenile jurisdiction offender" means a juvenile designated to be subject to juvenile disposition and an adult sentence imposed by the court;

(23) "Family in need of services" means any family whose juvenile evidences behavior that includes, but is not limited to, the following:

(A) Being habitually and without justification absent from school while subject to compulsory school attendance;

(B) Being habitually disobedient to the reasonable and lawful commands of his or her parent, guardian, or custodian; or

(C) Having absented himself or herself from the juvenile's home without sufficient cause, permission, or justification;

(24)(A) "Family services" means relevant services provided to a juvenile or his or her family, including, but not limited to:

(i) Child care;

(ii) Homemaker services;

(iii) Crisis counseling;

(iv) Cash assistance;

(v) Transportation;

(vi) Family therapy;

(vii) Physical, psychiatric, or psychological evaluation;

(viii) Counseling;

(ix) Treatment; or

(x) Post-adoptive services.

(B) Family services are provided in order to:

(i) Prevent a juvenile from being removed from a parent, guardian, or custodian;

(ii) Reunite the juvenile with the parent, guardian, or custodian from whom the juvenile has been removed;

(iii) Implement a permanent plan of adoption or guardianship for a juvenile in a dependency-neglect case; or

(iv) Rehabilitate a juvenile in a delinquency or family in need of services case;

(25) "Fast track" means that reunification services will not be provided or will be terminated before twelve (12) months of services;

(26)(A) "Fictive kin" means a person selected by the Division of Children and Family Services who:

(i) Is not related to a child by blood or marriage; and

(ii) Has a strong, positive, and emotional tie or role in the:

(a) Child's life; or

(b) Child's parent's life if the child is an infant.

(B) The Director of the Division of Children and Family Services or his or her designee shall approve a fictive kin for an infant;

(27)(A) "Forcible compulsion" means physical force, intimidation, or a threat, express or implied, of death, physical injury to, rape, sexual abuse, or kidnapping of any person.

(B) If the act was committed against the will of the juvenile, then forcible compulsion has been used.

(C) The age, developmental stage, and stature of the victim and the relationship of the victim to the assailant, as well as the threat of deprivation of affection, rights, and privileges from the victim by the assailant shall be considered in weighing the sufficiency of the evidence to prove compulsion;

(28) "Guardian" means any person, agency, or institution, as defined by § 28-65-101 et seq., whom a court of competent jurisdiction has so appointed;

(29)(A) "Home study" means a written report that is obtained after an investigation of a home by the department or other appropriate persons or agencies and that shall conform to rules established by the department.

(B)(i) An in-state home study, excluding the results of a criminal records check, shall be completed and presented to the requesting court within thirty (30) working days of the receipt of the request for the home study.

(ii) The results of the criminal records check shall be provided to the court as soon as they are received.

(iii) The circuit clerk of the county court shall:

(a) Keep a record of the national fingerprint-based criminal background checks performed by the Federal Bureau of Investigation for the court;

(b) Permit only the court and the employees of the clerk's office with an official reason to view the information in the national fingerprint-based criminal background check;

(c) Not permit anyone to obtain a copy of the national fingerprint-based criminal background check; and

(d) Permit a person specifically ordered by the court to view the information in the national fingerprint-based criminal background check.

(iv)(a) The department shall share the information obtained from the criminal records check and the national fingerprint-based criminal background checks only with employees of the department who have an official business reason to see the information.

(b) Unless specifically ordered to do so by the court, the department shall not share the information obtained from the criminal records check and the national fingerprint-based criminal background checks with persons not employed by the department.

(C)(i) The department may obtain a criminal background check on any person in the household sixteen (16) years of age and older, including a fingerprint-based check of national crime information databases.

(ii) Upon request, local law enforcement shall provide the department with criminal background information on any person in the household sixteen (16) years of age and older;

(30) "Imminent harm" means an act of harm that is a danger:

(A) To the physical, mental, or emotional health of a juvenile;

(B) That is constrained by time; and

(C) That may only be prevented by immediate intervention by a court;

(31) "Indecent exposure" means the exposure by a person of the person's sexual organs for the purpose of arousing or gratifying the sexual desire of the person or any other person, under circumstances in which the person knows the conduct is likely to cause affront or alarm;

(32) "Independence" means a permanency planning hearing disposition known as "Another Planned Permanent Living Arrangement (APPLA)" for the juvenile who will not be reunited with his or her family and because another permanent plan is not in the juvenile's best interest;

(33) "Juvenile" means an individual who is:

(A) From birth to eighteen (18) years of age, whether married or single; or

(B) Adjudicated delinquent, a juvenile member of a family in need of services, or dependent or dependent-neglected by the juvenile division of circuit court prior to eighteen (18) years of age and for whom the juvenile division of circuit court retains jurisdiction;

(34) "Juvenile detention facility" means any facility for the temporary care of juveniles alleged to be delinquent or adjudicated delinquent and awaiting disposition, who require secure custody in a physically restricting facility designed and operated with all entrances and exits under the exclusive control of the facility's staff, so that a juvenile may not leave the facility unsupervised or without permission;

(35) "Law enforcement officer" means any public servant vested by law with a duty to maintain public order or to make arrests for offenses;

(36) "Miranda rights" means the requirement set out in *Miranda v. Arizona*, 384 U.S. 436 (1966), for law enforcement officers to clearly inform an accused, including a juvenile taken into custody for a delinquent act or a criminal offense, that the juvenile has the right to remain silent, that anything the juvenile says will be used against him or her in court, that the juvenile has the right to consult with a lawyer and to have the lawyer with him or her during interrogation, and that, if the juvenile is indigent, a lawyer will be appointed to represent him or her;

(37)(A) "Neglect" means those acts or omissions of a parent, guardian, custodian, foster parent, or any person who is entrusted with the juvenile's care by a parent, custodian, guardian, or foster parent, including, but not limited to, an agent or employee of a public or private residential home, childcare facility, public or private school, or any person legally responsible under state law for the juvenile's welfare, that constitute:

(i) Failure or refusal to prevent the abuse of the juvenile when the person knows or has reasonable cause to know the juvenile is or has been abused;

(ii) Failure or refusal to provide the necessary food, clothing, shelter, or medical treatment necessary for the juvenile's well-being, except when the failure or refusal is caused primarily by the financial inability of the person legally responsible and no services for relief have been offered;

(iii) Failure to take reasonable action to protect the juvenile from abandonment, abuse, sexual abuse, sexual exploitation, neglect, or parental unfitness when the existence of this condition was known or should have been known;

(iv) Failure or irremediable inability to provide for the essential and necessary physical, mental, or emotional needs of the juvenile, including failure to provide a shelter that does not pose a risk to the health or safety of the juvenile;

(v) Failure to provide for the juvenile's care and maintenance, proper or necessary support, or medical, surgical, or other necessary care;

(vi) Failure, although able, to assume responsibility for the care and custody of the juvenile or to participate in a plan to assume the responsibility;

(vii) Failure to appropriately supervise the juvenile that results in the juvenile's being left alone:

(a) At an inappropriate age, creating a dangerous situation or a situation that puts the juvenile at risk of harm; or

(b) In inappropriate circumstances, creating a dangerous situation or a situation that puts the juvenile at risk of harm;

(viii) Failure to appropriately supervise the juvenile that results in the juvenile being placed in:

(a) Inappropriate circumstances, creating a dangerous situation; or

(b) A situation that puts the juvenile at risk of harm; or

(ix)(a) Failure to ensure a child between six (6) years of age and seventeen (17) years of age is enrolled in school or is being legally home-schooled; or

(b) As a result of an act or omission by the parent, custodian, or guardian of a child, the child is habitually and without justification absent from school.

(B)(i) "Neglect" shall also include:

(a) Causing a child to be born with an illegal substance present in the child's bodily fluids or bodily substances as a result of the

pregnant mother's knowingly using an illegal substance before the birth of the child; or

(b) At the time of the birth of a child, the presence of an illegal substance in the mother's bodily fluids or bodily substances as a result of the pregnant mother's knowingly using an illegal substance before the birth of the child.

(ii) For the purposes of this subdivision (37)(B), "illegal substance" means a drug that is prohibited to be used or possessed without a prescription under the Arkansas Criminal Code, § 5-1-101 et seq.

(iii) A test of the child's bodily fluids or bodily substances may be used as evidence to establish neglect under subdivision (37)(B)(i)(a) of this section.

(iv) A test of the mother's bodily fluids or bodily substances or the child's bodily fluids or bodily substances may be used as evidence to establish neglect under subdivision (37)(B)(i)(b) of this section;

(38)(A) "Notice of hearing" means a notice that describes the nature of the hearing, the time, date, and place of hearing, the right to be present, heard, and represented by counsel, and instructions on how to apply to the court for appointment of counsel, if indigent, or a uniform notice as developed and prescribed by the Supreme Court.

(B) The notice of hearing shall be served in the manner provided for service under the Arkansas Rules of Civil Procedure;

(39) "Order to appear" means an order issued by the court directing a person who may be subject to the court's jurisdiction to appear before the court at a date and time as set forth in the order;

(40)(A) "Out-of-home placement" means:

(i) Placement in a home or facility other than placement in a youth services center, a detention facility, or the home of a parent or guardian of the juvenile; or

(ii) Placement in the home of an individual other than a parent or guardian, not including any placement when the court has ordered that the placement be made permanent and ordered that no further reunification services or six-month reviews are required.

(B) "Out-of-home placement" shall not include placement in a youth services center or detention facility as a result of a finding of delinquency;

(41) "Parent" means:

(A) A biological mother;

(B) An adoptive parent; or

(C) A man:

(i) To whom the biological mother was married at the time of conception or birth;

(ii) Who has signed an acknowledgment of paternity pursuant to § 9-10-120;

(iii) Who has been found by a court of competent jurisdiction to be the biological father of the juvenile or to have otherwise established paternity; or

(iv) Who is listed as the parent on the birth certificate of the child;

(42) "Paternity hearing" means a legal proceeding to determine the biological father of a juvenile;

(43) "Permanent custody" means custody that is transferred to a person as a permanency disposition in a juvenile case and the case is closed;

(44) "Pornography" means:

(A) Pictures, movies, and videos lacking serious literary, artistic, political, or scientific value that when taken as a whole and applying contemporary community standards would appear to the average person to appeal to the prurient interest;

(B) Material that depicts sexual conduct in a patently offensive manner lacking serious literary, artistic, political, or scientific value; or

(C) Obscene or licentious material;

(45)(A) "Predisposition report" means a report concerning the juvenile, the family of the juvenile, all possible disposition alternatives, the location of the school in which the juvenile is or was last enrolled, whether the juvenile has been tested for or has been found to have any disability, the name of the juvenile's attorney and, if appointed by the court, the date of the appointment, any participation by the juvenile or his or her family in counseling services previously or currently being provided in conjunction with adjudication of the juvenile, and any other matters relevant to the efforts to provide treatment to the juvenile or the need for treatment of the juvenile or the family.

(B) The predisposition report shall include a home study of any out-of-home placement that may be part of the disposition;

(46) "Prosecuting attorney" means an attorney who is elected as district prosecuting attorney, the duly appointed deputy prosecuting attorney, or any city prosecuting attorney;

(47) "Protection plan" means a written plan developed by the department in conjunction with the family and support network to protect the juvenile from harm and which allows the juvenile to remain safely in the home;

(48) "Putative father" means any man not deemed or adjudicated under the laws of the jurisdiction of the United States to be the biological father of a juvenile who claims to be or is alleged to be the biological father of the juvenile;

(49)(A)(i) "Reasonable efforts" means efforts to preserve the family before the placement of a child in foster care to prevent the need for removing the child from his or her home and efforts to reunify a family made after a child is placed out of his or her home to make it possible for him or her to safely return home.

(ii) Reasonable efforts shall also be made to obtain permanency for a child who has been in an out-of-home placement for more than twelve (12) months or for fifteen (15) of the previous twenty-two (22) months.

(iii) In determining whether or not to remove a child from a home or return a child back to a home, the child's health and safety shall be the paramount concern.

(iv) The department or other appropriate agency shall exercise reasonable diligence and care to utilize all available services related to meeting the needs of the juvenile and the family.

(v)(a) "Reasonable efforts" include efforts to involve an incarcerated parent.

(b) The department shall:

(1) Involve an incarcerated parent in case planning;

(2) Monitor compliance with services offered by the Division of Correction to the extent permitted by federal law; and

(3) Offer visitation in accordance with the policies of the Division of Correction if visitation is appropriate and in the best interest of the child.

(B) The juvenile division of circuit court may deem that reasonable efforts have been made when the court has found that the first contact by the department occurred during an emergency in which the child could not safely remain at home, even with reasonable services being provided.

(C) Reasonable efforts to reunite a child with his or her parent or parents shall not be required in all cases. Specifically, reunification shall not be required if a court of competent jurisdiction, including the juvenile division of circuit court, has determined by clear and convincing evidence that the parent has:

(i) Subjected the child to aggravated circumstances;

(ii) Committed murder of any child;

(iii) Committed manslaughter of any child;

(iv) Aided or abetted, attempted, conspired, or solicited to commit the murder or the manslaughter;

(v) Committed a felony battery that results in serious bodily injury to any child;

(vi) Had the parental rights involuntarily terminated as to a sibling of the child;

(vii) Abandoned an infant as defined in subdivision (1) of this section; or

(viii) Registered with a sex offender registry under the Adam Walsh Child Protection and Safety Act of 2006, Pub. L. No. 109-248.

(D) Reasonable efforts to place a child for adoption or with a legal guardian or permanent custodian may be made concurrently with reasonable efforts to reunite a child with his or her family;

(50) "Residence" means:

(A) The place where the juvenile is domiciled; or

(B) The permanent place of abode where the juvenile spends an aggregate of more than six (6) months of the year;

(51)(A) "Restitution" means actual economic loss sustained by an individual or entity as a proximate result of the delinquent acts of a juvenile.

(B) Such economic loss shall include, but not be limited to, medical expenses, funeral expenses, expenses incurred for counseling services, lost wages, and expenses for repair or replacement of property;

(52) "Safety plan" means a plan ordered by the court to be developed for an adjudicated delinquent sex offender under § 9-27-356 who is at moderate or high risk of reoffending for the purposes of § 9-27-309;

(53) "Sexual abuse" means:

(A) By a person fourteen (14) years of age or older to a person younger than eighteen (18) years of age:

(i) Sexual intercourse, deviant sexual activity, or sexual contact by forcible compulsion;

(ii) Attempted sexual intercourse, attempted deviant sexual activity, or attempted sexual contact by forcible compulsion;

(iii) Indecent exposure; or

(iv) Forcing the watching of pornography or live human sexual activity;

(B) By a person eighteen (18) years of age or older to a person who is younger than fifteen (15) years of age and is not his or her spouse:

(i) Sexual intercourse, deviant sexual activity, or sexual contact;

(ii) Attempted sexual intercourse, attempted deviant sexual activity, or attempted sexual contact; or

(iii) Solicitation of sexual intercourse, solicitation of deviant sexual activity, or solicitation of sexual contact;

(C) By a person twenty (20) years of age or older to a person who is younger than sixteen (16) years of age who is not his or her spouse:

(i) Sexual intercourse, deviant sexual activity, or sexual contact;

(ii) Attempted sexual intercourse, attempted deviant sexual activity, or attempted sexual contact; or

(iii) Solicitation of sexual intercourse, solicitation of deviant sexual activity, or solicitation of sexual contact;

(D) By a caretaker to a person younger than eighteen (18) years of age:

(i) Sexual intercourse, deviant sexual activity, or sexual contact;

(ii) Attempted sexual intercourse, attempted deviant sexual activity, or attempted sexual contact;

(iii) Forcing or encouraging the watching of pornography;

(iv) Forcing, permitting, or encouraging the watching of live sexual activity;

(v) Forcing listening to a phone sex line; or

(vi) An act of voyeurism;

(E) By a person younger than fourteen (14) years of age to a person younger than eighteen (18) years of age:

(i) Sexual intercourse, deviant sexual activity, or sexual contact by forcible compulsion; or

(ii) Attempted sexual intercourse, attempted deviant sexual activity, or attempted sexual contact by forcible compulsion; and

(F) By a person eighteen (18) years of age or older to a person who is younger than eighteen (18) years of age, the recruiting, harboring,

transporting, obtaining, patronizing, or soliciting of a child for the purpose of a commercial sex act;

(54)(A) "Sexual contact" means any act of sexual gratification involving:

(i) Touching, directly or through clothing, of the sex organs, buttocks, or anus of a juvenile or the breast of a female juvenile;

(ii) Encouraging the juvenile to touch the offender in a sexual manner; or

(iii) Requesting the offender to touch the juvenile in a sexual manner.

(B) Evidence of sexual gratification may be inferred from the attendant circumstances surrounding the investigation of the specific complaint of child maltreatment.

(C) This subdivision (54) shall not permit normal, affectionate hugging to be construed as sexual contact;

(55) "Sexual exploitation" includes:

(A) Allowing, permitting, or encouraging participation or depiction of the juvenile in:

(i) Prostitution;

(ii) Obscene photographing; or

(iii) Obscene filming; and

(B) Obscenely depicting, obscenely posing, or obscenely posturing a juvenile for any use or purpose;

(56) "Shelter care" means the temporary care of a juvenile in physically unrestricting facilities under an order for placement pending or under an adjudication of dependency-neglect or family in need of services;

(57) "Significant other" means a person:

(A) With whom the parent shares a household; or

(B) Who has a relationship with the parent that results in the person acting in loco parentis with respect to the parent's child or children, regardless of living arrangements;

(58) "Temporary custody" means custody that is transferred to a person during the pendency of the juvenile court case when services are being provided to achieve the goal of the case plan;

(59) "Trial placement" means that custody of the juvenile remains with the department, but the juvenile is returned to the home of a parent or the person from whom custody was removed for a period not to exceed sixty (60) days;

(60) "UCCJEA" means the Uniform Child-Custody Jurisdiction and Enforcement Act, § 9-19-101 et seq.;

(61) "UIFSA" means the Uniform Interstate Family Support Act, § 9-17-101 et seq.;

(62) "Victim" means any person or entity entitled to restitution as defined in subdivision (51) of this section as the result of a delinquent act committed by a juvenile adjudicated delinquent;

(63) "Victim of human trafficking" means a child who has been subjected to trafficking of persons as defined in § 5-18-103;

(64)(A) “Voyeurism” means looking for the purpose of sexual arousal or gratification into a private location or place in which a juvenile may reasonably be expected to be nude or partially nude.

(B) This definition does not apply to delinquency actions;

(65) “Youth services center” means a youth services facility operated by the state or a contract provider; and

(66) “Youth services facility” means a facility operated by the state or its designee for the care of juveniles who have been adjudicated delinquent or convicted of a crime and who require secure custody in either a physically restrictive facility or a staff-secured facility operated so that a juvenile may not leave the facility unsupervised or without supervision.

History. Acts 1989, No. 273, § 3; 1993, No. 468, § 4; 1993, No. 1126, §§ 1, 2; 1993, No. 1227, § 1; 1994 (2nd Ex. Sess.), No. 11, § 1; 1994 (2nd Ex. Sess.), No. 36, § 1; 1995, No. 532, §§ 1-4; 1995, No. 804, § 1; 1995, No. 811, § 2; 1995, No. 1261, § 13; 1997, No. 208, § 8; 1997, No. 1227, § 1; 1999, No. 401, §§ 2-4; 1999, No. 1192, § 12; 1999, No. 1340, §§ 1-7, 35; 2001, No. 1503, § 1; 2001, No. 1610, § 1; 2003, No. 1166, § 2; 2003, No. 1319, §§ 1-8; 2005, No. 1176, § 3; 2005, No. 1191, § 1; 2005, No. 1990, § 1; 2007, No. 587, §§ 3-9; 2009, No. 956, § 5; 2011, No. 792,

§§ 1-5; 2011, No. 793, § 7; 2011, No. 1175, § 1; 2013, No. 761, § 1; 2013, No. 1055, §§ 1-7, 18; 2013, No. 1431, § 3; 2015, No. 861, § 2; 2015, No. 1034 § 1; 2015, No. 1092, §§ 2, 3; 2017, No. 209, §§ 1-4; 2017, No. 700, § 1; 2017, No. 993, §§ 1, 2; 2019, No. 315, § 719; 2019, No. 554, § 1; 2019, No. 910, § 690; 2019, No. 927, § 1; 2021, No. 814, § 1.

Amendments. The 2021 amendment added the designations in (41); added “or to have otherwise established paternity; or” in (41)(C)(iii); added (41)(C)(iv); and made stylistic changes.

CASE NOTES

ANALYSIS

Dependent-Neglected Juvenile.
Parent.

Dependent-Neglected Juvenile.

There was sufficient evidence from which to conclude that the children were dependent-neglected where one child was, *inter alia*, severely autistic, nonverbal, and would sneak out of the house, and the measures the mother took to prevent her escape were not successful; moreover, the mother had six other children, one or more with medical issues including seizures and asthma, and her housing was unstable and not an environment suitable for children with underlying health conditions. *Johnson v. Ark. Dep’t of Human Servs.*, 2020 Ark. App. 513, 611 S.W.3d 240 (2020).

Circuit court’s finding that a mother’s children were not dependent-neglected

was clearly erroneous because the testimony at the adjudication hearing established that the mother admitted drug use while pregnant and continued to use drugs for months after the case began. *Ark. Dep’t of Human Servs. v. Hall*, 2021 Ark. App. 108, 618 S.W.3d 219 (2021).

Parent.

In a termination of parental rights case, the circuit court did not err in finding that appellant was the child’s father because appellant’s DNA results confirming him as the child’s biological father were introduced at the May 1, 2019, review hearing; he had participated in services through the Department of Human Services, had been present at every hearing, and was allowed to testify, question witnesses, and participate in the case; and he was appointed parent counsel to represent his legal interests for the termination hearing. *Johnson v. Ark. Dep’t of Human Servs.*, 2020 Ark. App. 533 (2020).

9-27-306. Jurisdiction.

(a)(1) The circuit court shall have exclusive original jurisdiction of and shall be the sole court for the following proceedings governed by this subchapter, including without limitation:

(A)(i) Proceedings in which a juvenile is alleged to be delinquent as defined in this subchapter, including juveniles ten (10) to eighteen (18) years of age.

(ii) The court may retain jurisdiction of a juvenile delinquent up to twenty-one (21) years of age if the juvenile committed the delinquent act before reaching eighteen (18) years of age;

(B) Proceedings in which a juvenile is alleged to be dependent or dependent-neglected from birth to eighteen (18) years of age, except for the following:

(i)(a) A juvenile who has been adjudicated dependent or dependent-neglected before eighteen (18) years of age may request the court to continue jurisdiction over the juvenile until twenty-one (21) years of age so long as the juvenile is:

(1) Completing secondary education or a program leading to an equivalent credential;

(2) Enrolled in an institution providing postsecondary or vocational education;

(3) Participating in a program or activity designed to promote or remove barriers to employment;

(4) Employed for at least eighty (80) hours per month; or

(5) Incapable of completing school or work requirements due to a documented medical condition.

(b) The court shall retain jurisdiction only if the juvenile meets the requirements of subdivision (a)(1)(B)(i)(a) of this section or has a viable plan to meet the requirements.

(c) The court shall discontinue jurisdiction only after a hearing to determine whether:

(1) The juvenile:

(A) Knowingly and voluntarily is requesting to leave care;

(B) Has failed to meet the requirements of subdivision (a)(1)(B)(i)(a) of this section; or

(C) Does not have a viable plan to meet the requirements; and

(2) The Department of Human Services has fully complied with §§ 9-27-363 and 9-28-114; or

(ii) A juvenile may contact his or her attorney ad litem to petition the court to return to the court's jurisdiction if the juvenile:

(a) Was adjudicated dependent or dependent-neglected;

(b) Was in foster care at eighteen (18) years of age; and

(c) Left foster care but desires to submit to the jurisdiction of the court before reaching twenty-one (21) years of age to benefit from extended foster care;

(C) Proceedings in which emergency custody or a seventy-two-hour hold has been taken on a juvenile under § 9-27-313 or the Child Maltreatment Act, § 12-18-101 et seq.;

(D) Proceedings in which a family is alleged to be in need of services as defined by this subchapter, which shall include juveniles from birth to eighteen (18) years of age, except for the following:

(i) A juvenile whose family has been adjudicated as a family in need of services and who is in foster care before eighteen (18) years of age may request that the court continue jurisdiction until twenty-one (21) years of age if the juvenile is engaged in a course of instruction or treatment, or is working at least eighty (80) hours a month towards self-sufficiency to receive independent living or transitional services;

(ii) The court shall retain jurisdiction only if the juvenile remains or has a viable plan to remain in instruction or treatment to receive independent living services; or

(iii) The court shall discontinue jurisdiction upon request of the juvenile or when the juvenile completes or is discontinued from the instruction or treatment to receive independent living services;

(E) Proceedings for termination of parental rights for a juvenile under this subchapter;

(F) Proceedings in which custody of a juvenile is transferred to the department;

(G) Proceedings for which a juvenile is alleged to be an extended juvenile jurisdiction offender under § 9-27-501 et seq.;

(H) Proceedings for which a juvenile is transferred to the juvenile division of circuit court from the criminal division of circuit court under § 9-27-318;

(I) Custodial placement proceedings filed by the department; and

(J) Proceedings in dependency-neglect or family in need of services matters to set aside an order of permanent custody upon the disruption of the placement.

(2) A juvenile shall not under any circumstance remain under the court's jurisdiction past twenty-one (21) years of age.

(3)(A) When the department exercises custody of a juvenile under the Child Maltreatment Act, § 12-18-101 et seq., files a petition for an ex parte emergency order, or files a petition for dependency-neglect concerning that juvenile, before or subsequent to the other legal proceeding, a party to that petition may file a motion to transfer any other legal proceeding concerning the juvenile to the court hearing the dependency-neglect petition.

(B) Upon the filing of a motion, the other legal proceeding shall be transferred to the court hearing the dependency-neglect case.

(4) The court shall retain jurisdiction to issue orders of adoption, interlocutory or final, if a juvenile is placed outside the State of Arkansas.

(b) The assignment of cases to the juvenile division of the circuit court shall be as described by the Supreme Court in Administrative Order Number 14, originally issued April 6, 2001.

(c)(1) The circuit court shall have concurrent jurisdiction with the district court over juvenile curfew violations.

(2) For juvenile curfew violations, the prosecutor may file a family in need of services petition in circuit court or a citation in district court.

(d) The circuit court shall have jurisdiction to hear proceedings commenced in any court of this state or court of comparable jurisdiction of another state that are transferred to it under the Uniform Child-Custody Jurisdiction and Enforcement Act, § 9-19-101 et seq.

(e) Regardless of funding, a juvenile will be allowed to return to foster care if evidence is presented to the circuit court that the department failed to comply with §§ 9-27-363 and 9-28-114 or if there is evidence that the juvenile was coerced by an employee or agent of the department to leave foster care.

(f) If a juvenile over eighteen (18) years of age who is allowed to reenter extended foster care fails to be engaged in or have a viable plan to meet the requirements in subdivision (a)(1)(B)(i)(a) of this section or have a viable plan to meet the requirements of subdivision (a)(1)(B)(i)(a) of this section for more than sixty (60) days, the department may file a motion to terminate the jurisdiction of the court and discharge the juvenile from foster care.

History. Acts 1989, No. 273, § 5; 1993, No. 468, § 5; 1995, No. 533, § 1; 2001, No. 987, § 1; 2001, No. 1262, § 1; 2003, No. 1166, § 4; 2003, No. 1319, § 9; 2005, No. 1191, § 2; 2005, No. 1990, § 2; 2007, No. 257, § 1; 2009, No. 758, §§ 9, 10; 2009, No. 956, § 6; 2011, No. 792, §§ 6, 7; 2015, No. 875, § 1; 2021, No. 316, § 1; 2021, No. 791, §§ 1, 2.

A.C.R.C. Notes. Pursuant to § 1-2-207(b), subdivision (a)(1)(B)(ii) of this section is set out above as amended by Acts 2021, No. 791, § 1. Acts 2021, No. 316, § 1, amended subdivision (a)(1)(B)(ii) to read:

“(ii) A juvenile may contact his or her attorney ad litem to petition the court to return to the court’s jurisdiction to receive transitional services if the juvenile:

“(a) Was adjudicated dependent or dependent-neglected;

“(b) Was in foster care at eighteen (18) years of age; and

“(c) Left foster care but desires to submit to the jurisdiction of the court before

reaching twenty-one (21) years of age to benefit from transitional services;”

Amendments. The 2021 amendment by No. 316 rewrote (a)(1)(B)(i)(a); substituted “meets the requirements of subdivision (a)(1)(B)(i)(a) of this section or has a viable plan to meet the requirements” for “remains or has a viable plan to remain in instruction or treatment, or is working at least eighty (80) hours a month toward gaining self-sufficiency” in (a)(1)(B)(i)(b); rewrote (a)(1)(B)(i)(c)(1); deleted “independent living or” preceding “transitional services” in the introductory language of (a)(1)(B)(ii) and in (a)(1)(B)(ii)(c); and deleted (a)(1)(B)(ii)(d).

The 2021 amendment by No. 791 deleted “to receive independent living or transitional services” following “jurisdiction” in the introductory language of (a)(1)(B)(ii); substituted “extended foster care” for “independent living or transitional services care” in (a)(1)(B)(ii)(c); deleted (a)(1)(B)(ii)(d); and rewrote (f).

9-27-307. Venue.

(a)(1)(A) Except as set forth in subdivisions (a)(2)-(4) of this section, a proceeding under this subchapter shall be commenced in the circuit court of the county in which the juvenile resides.

(B)(i) No dependency-neglect proceeding shall be dismissed if a proceeding is filed in the incorrect county.

(ii) If the proceeding is filed in the incorrect county, then the dependency-neglect proceeding shall be transferred to the proper county upon discovery of the proper county of residence of the juvenile.

(2) Proceedings may be commenced in the county where the alleged act or omission occurred in any of the following:

(A) Nonsupport after establishment of paternity;

(B) Delinquency; or

(C) Dependency-neglect.

(3) Proceedings under the Uniform Child-Custody Jurisdiction and Enforcement Act, § 9-19-101 et seq., shall be commenced in the court provided by the Uniform Child-Custody Jurisdiction and Enforcement Act, § 9-19-101 et seq.

(4) Adoptions and guardianships may be filed in a juvenile court that has previously asserted continuing jurisdiction of the juvenile.

(5) Juvenile proceedings shall comply with § 16-13-210, except detention hearings under § 9-27-326 and probable cause hearings under § 9-27-315.

(b)(1)(A) Following adjudication, the court may on its own motion or on motion of any party transfer the case to the county of the juvenile's residence when the provisions of the Uniform Child-Custody Jurisdiction and Enforcement Act, § 9-19-101 et seq., do not apply.

(B) An adult or family member who files a family in need of services petition shall file a motion to transfer if the adult or family member:

(i) Receives information indicating that the juvenile involved in the family in need of services case has relocated to a county in another judicial district; and

(ii) Knows the address of the juvenile in the county to which the juvenile has relocated.

(2) The court shall not transfer any case to another judicial district prior to adjudication, excluding matters filed in the incorrect venue, or any case in which a petition to terminate parental rights has been filed unless the court has taken final action on the petition.

(c)(1) Prior to transferring a case to another venue, the court shall contact the judge in the other venue to confirm that the judge in the other venue will accept the transfer.

(2)(A) Upon confirmation that the judge will accept the transfer of venue, the transferring judge shall enter the transfer order. The transfer order shall:

(i) Indicate that the judge has accepted the transfer;

(ii) State the location of the court in the new venue; and

(iii) Set the time and date of the next hearing.

(B) The transfer order shall be:

(i) Provided to all parties and attorneys to the case; and

(ii) Transmitted immediately to the judge accepting the transfer.

(3) The transferring court shall also ensure that all court records are copied and sent to the judge in the new venue.

History. Acts 1989, No. 273, § 6; 1997, No. 1084, § 1; 2001, No. 1503, § 2; 2003, No. 1319, § 10; 2003, No. 1809, § 1; 2005, No. 1990, § 3; 2007, No. 587, § 10; 2009, No. 956, § 7; 2021, No. 816, § 3.

Amendments. The 2021 amendment added (b)(1)(B).

9-27-311. Required contents of petition.

(a) The petition shall set forth the following:

(1)(A) The name, address, gender, Social Security number, and date of birth of each juvenile subject of the petition.

(B) A single petition for dependency-neglect or family in need of services shall be filed that includes all siblings who are subjects of the petition;

(2) The name and address of each of the parents or the surviving parent of the juvenile or juveniles;

(3) The name and address of the person, agency, or institution having custody of the juvenile or juveniles;

(4) The name and address of any other person, agency, or institution having a claim to custody or guardianship of the juvenile or juveniles;

(5) In a proceeding to establish paternity, the name and address of both the putative father and the presumed legal father, if any;

(6) In a dependency-neglect proceeding, the name and address of a putative parent, if any; and

(7) In a dependency-neglect proceeding:

(A) The name, address, gender, and date of birth of any sibling of a juvenile named as respondent to the petition; and

(B) The name of each parent, guardian, or custodian of a sibling of a juvenile named as respondent to the petition.

(b) If the name or address of anyone listed in subsection (a) of this section is unknown or cannot be ascertained by the petitioner with reasonable diligence, this shall be alleged in the petition and the petition shall not be dismissed for insufficiency, but the court shall direct appropriate measures to find and give notice to the persons.

(c)(1) All persons named in subdivisions (a)(1)-(3) of this section shall be made defendants and served as required by this subchapter.

(2) However:

(A) In dependency-neglect petitions, the juvenile shall have party status and be named in the petition as a respondent and shall be served notice under § 9-27-312;

(B) In a dependency-neglect and termination of parental rights petition, the putative parent shall be named as a party if the petitioner alleges that the putative parent:

(i) May have a claim of paternity of a juvenile born outside of marriage;

(ii) Has established significant contacts with the juvenile, which may be demonstrated by a significant custodial, personal, or financial relationship with the juvenile; or

(iii) Is listed on the Putative Father Registry;

(C) A putative parent who was not originally named as a party to the dependency-neglect petition shall be added as a party if:

(i) Paternity is established and a court of competent jurisdiction enters an order establishing paternity between the juvenile and the putative parent; or

(ii) The court determines that the putative parent is a parent as defined in § 9-27-303; and

(D) In a paternity action, the petitioner shall name as defendants only the mother, the putative father, or the presumed legal father, if any.

(d)(1)(A) The Department of Human Services shall make diligent efforts to identify putative parents in a dependency-neglect proceeding.

(B) Diligent efforts shall include without limitation checking the Putative Father Registry.

(2)(A)(i) A petitioner may name and serve a putative parent as a party under § 9-27-312 in order to resolve the putative parent's status and rights under § 9-27-325 or terminate the rights of the putative parent under § 9-27-341.

(ii) If the petitioner does not name and serve a putative parent as a party in accordance with subdivision (d)(2)(A)(i) of this section, the petitioner shall provide a putative parent with notice under Rule 4 of the Arkansas Rules of Civil Procedure of a proceeding as soon as the putative parent is identified.

(B) The notice shall include information about:

(i) The method of establishing paternity;

(ii) The right of the putative parent to prove significant contacts; and

(iii) The right of the putative parent to be heard by the court.

(C) The petitioner shall provide the notice to the court and the parties to the case.

(D) After receiving the notice required under subdivision (d)(2)(A)(ii) of this section, the putative parent has the burden of establishing one (1) of the following:

(i) The putative parent has significant contacts with the juvenile, which may be demonstrated by a significant custodial, personal, or financial relationship with the juvenile; or

(ii) The putative parent is a parent as defined in § 9-27-303.

(E) If the putative parent, after receiving the notice required under subdivision (d)(2)(A)(ii) of this section and being given an opportunity to prove significant contacts with the juvenile, fails to demonstrate significant contacts with the juvenile and the court finds that the putative parent was given sufficient notice and an opportunity to be heard, the court may:

(i) Order deoxyribonucleic acid (DNA) testing to determine whether the putative parent is the biological parent of the juvenile;

(ii) Enter an order:

(a) Finding that the putative parent does not have rights to the juvenile;

(b) Dismissing the putative parent from the action; and

(c) Finding that no further notice is due to the putative parent whose rights have not attached with regard to the juvenile, including in the event of a filed petition for adoption; or

(iii) Enter an order providing that only a parent or putative parent whose rights have attached to the juvenile shall be included in a petition to terminate parental rights under § 9-27-341.

(e)(1) The petition shall set forth the following in plain and concise words:

(A) The facts that, if proven, would bring the family or juvenile within the court's jurisdiction;

(B) The section of this subchapter upon which jurisdiction for the petition is based;

(C) The relief requested by the petitioner; and

(D) If a petition for delinquency proceedings, any and all sections of the criminal laws allegedly violated.

(2)(A) The petition shall be supported by an affidavit of facts.

(B) A supporting affidavit of facts shall not be required for delinquency, paternity, or termination of parental rights petitions.

(C) The supporting affidavit of facts shall include known information regarding the fitness of the noncustodial parent to be considered for custody, placement, or visitation with the juvenile.

(D) If the petition for dependency-neglect is filed by the department, the supporting affidavit of facts shall include a list of all contact the department has had with the family before the filing of the petition, including without limitation hotline calls accepted for maltreatment, investigations, and open cases.

History. Acts 1989, No. 273, § 10; 1989 (3rd Ex. Sess.), No. 34, § 2; 1995, No. 1184, § 19; 1997, No. 1085, § 1; 1997, No. 1227, § 2; 1999, No. 1340, §§ 10, 11; 2011, No. 1175, § 2; 2015, No. 1017, §§ 3-5; 2015, No. 1022, § 1; 2019, No. 541, §§ 1, 2; 2021, No. 813, §§ 1-3.

Amendments. The 2021 amendment rewrote (c)(2)(B); inserted present (c)(2)(C); redesignated former (c)(2)(C) as (c)(2)(D); substituted "in order to resolve the putative parent's" for "to resolve the party" in (d)(2)(A)(i); and added (d)(2)(D) and (E).

9-27-316. Right to counsel.

(a)(1) In delinquency and family-in-need-of-services cases, a juvenile and his or her parent, guardian, or custodian shall be advised by the law enforcement official taking a juvenile into custody, by the intake officer at the initial intake interview, and by the court at the juvenile's first appearance before the circuit court that the juvenile has the right to be represented at all stages of the proceedings by counsel.

(2) An extended juvenile jurisdiction offender shall have a right to counsel at every stage of the proceedings, including all reviews.

(b)(1)(A) The inquiry concerning the ability of the juvenile to retain counsel shall include a consideration of the juvenile's financial resources and the financial resources of his or her family.

(B) However, the failure of the juvenile's family to retain counsel for the juvenile shall not deprive the juvenile of the right to appointed counsel if required under this section.

(2) After review by the court of an affidavit of financial means completed and verified by the parent of the juvenile and a determination by the court that the parent or juvenile has the ability to pay, the court may order financially able juveniles, parents, guardians, or custodians to pay all or part of reasonable attorney's fees and expenses for representation of a juvenile.

(3) All moneys collected by the circuit clerk under this subsection shall be retained by the clerk and deposited into a special fund to be known as the "juvenile representation fund".

(4) The court may direct that money from this fund be used in providing counsel for juveniles under this section in delinquency or family-in-need-of-services cases and indigent parents or guardians in dependency-neglect cases as provided by subsection (h) of this section.

(5) Any money remaining in the fund at the end of the fiscal year shall not revert to any other fund but shall carry over into the next fiscal year in the juvenile representation fund.

(c) If counsel is not retained for the juvenile or it does not appear that counsel will be retained, counsel shall be appointed to represent the juvenile at all appearances before the court unless the right to counsel is waived in writing as set forth in § 9-27-317.

(d) In a proceeding in which the judge determines that there is a reasonable likelihood that the proceeding may result in the juvenile's commitment to an institution in which the freedom of the juvenile would be curtailed and counsel has not been retained for the juvenile, the court shall appoint counsel for the juvenile.

(e) Appointment of counsel shall be made at a time sufficiently in advance of the court appearance to allow adequate preparation by appointed counsel and adequate consultation between the appointed counsel and the client.

(f)(1) The court shall appoint an attorney ad litem who shall meet standards and qualifications established by the Supreme Court to represent the best interest of the juvenile when a dependency-neglect petition is filed or when an emergency ex parte order is entered in a dependency-neglect case, whichever occurs earlier.

(2) The court may appoint an attorney ad litem to represent the best interest of a juvenile involved in any case before the court and shall consider the juvenile's best interest in determining whether to appoint an attorney ad litem.

(3) Each attorney ad litem shall:

(A) File written motions, responses, or objections at all stages of the proceedings when necessary to protect the best interest of the juvenile;

(B) Attend all hearings and participate in all telephone conferences with the court unless excused by the court; and

(C) Present witnesses and exhibits when necessary to protect the juvenile's best interest.

(4) An attorney ad litem shall be provided access to all records relevant to the juvenile's case, including, but not limited to, school records, medical records, all court records relating to the juvenile and his or her family, and records, including those maintained electronically and in the Children's Reporting and Information System, of the Department of Human Services relating to the juvenile and his or her family to the extent permitted by federal law.

(5)(A) An attorney ad litem shall represent the best interest of the juvenile.

(B) If the juvenile's wishes differ from the attorney's determination of the juvenile's best interest, the attorney ad litem shall communicate the juvenile's wishes to the court in addition to presenting his or her determination of the juvenile's best interest.

(g)(1) The court may appoint a volunteer court-appointed special advocate from a program that shall meet all state and national court-appointed special advocate standards to advocate for the best interest of juveniles in dependency-neglect proceedings.

(2) No court-appointed special advocate shall be assigned a case before:

(A) Completing a training program in compliance with National CASA/GAL Association for Children and state standards; and

(B) Being approved by the local court-appointed special advocate program, which will include appropriate criminal background and child abuse registry checks.

(3) Each court-appointed special advocate shall:

(A)(i) Investigate the case to which he or she is assigned to provide independent factual information to the court through the attorney ad litem, court testimony, or court reports.

(ii) The court-appointed special advocate may testify if called as a witness.

(iii) When the court-appointed special advocate prepares a written report for the court, the advocate shall provide all parties or the attorney of record with a copy of the written report seven (7) business days before the relevant hearing; and

(B) Monitor the case to which he or she is assigned to ensure compliance with the court's orders.

(4) Upon presentation of an order of appointment, a court-appointed special advocate shall be provided access to all records relevant to the juvenile's case, including, but not limited to, school records, medical records, all court records relating to the juvenile and his or her family, and department records, including those maintained electronically and in the Children's Reporting and Information System, to the extent permitted by federal law.

(5) A court-appointed special advocate is not a party to the case to which he or she is assigned and shall not call witnesses or examine witnesses.

(6) A court-appointed special advocate shall not be liable for damages for personal injury or property damage pursuant to the Arkansas Volunteer Immunity Act, § 16-6-101 et seq.

(7) Except as provided in this subsection, a court-appointed special advocate shall not disclose any confidential information or reports to anyone except as ordered by the court or otherwise provided by law.

(h)(1)(A) All parents and custodians have a right to counsel in all dependency-neglect proceedings.

(B) In all dependency-neglect proceedings that set out to remove legal custody from a parent or custodian:

(i) The parent or custodian from whom custody was removed shall have the right to be appointed counsel; and

(ii) The court may appoint an attorney to a:

(a)(1) Noncustodial parent if the court determines that the noncustodial parent has demonstrated a significant custodial relationship with the juvenile.

(2) A determination that the noncustodial parent has demonstrated a significant custodial relationship with the juvenile shall be made at the first appearance of the noncustodial parent in the matter; or

(b)(1) Putative parent if the putative parent has demonstrated significant contact with the juvenile and the court finds the rights of the putative parent have attached.

(2) A determination on whether the rights of the putative parent have attached shall be made at the first appearance of the putative parent in the matter.

(3) Counsel shall not be appointed to a putative parent if the:

(A) Court finds that the putative parent has not demonstrated significant contact with the juvenile;

(B) Court finds that the rights of the putative parent have not attached; or

(C) The putative parent does not appear in the matter.

(4) If a putative parent fails to demonstrate significant contacts with the juvenile, the court shall inform the putative parent on the following:

(A) How to be considered a parent under the Arkansas Juvenile Code of 1989, § 9-27-301 et seq.;

(B) The eligibility requirements for being appointed counsel; and

(C) The process for requesting the appointment of counsel if the putative parent meets the eligibility requirements for being appointed counsel.

(C) Counsel shall not be appointed to a party in a dependency-neglect proceeding unless:

(i) The court finds that the parent, putative parent, or custodian of the juvenile is indigent; and

(ii) Counsel is requested by the parent, putative parent, or custodian of the juvenile after the parent, putative parent, or custodian is informed of his or her right to be appointed counsel.

(D)(i) Parents, putative parents, and custodians shall be advised in the dependency-neglect petition or the ex parte emergency order, whichever is sooner, and at the first appearance before the court, of the right to counsel and the right to appointed counsel, if eligible.

(ii) As required under § 9-27-314, a circuit court shall appoint counsel in an ex parte emergency order and shall determine eligibility at the commencement of the probable cause hearing.

(E) All parents shall have the right to be appointed counsel in termination of parental rights hearings, and the court shall appoint counsel if the court makes a finding that the parent is indigent and counsel is requested by the parent.

(F) In a dependency-neglect proceeding naming a minor parent as a defendant, the court shall appoint a qualified parent counsel for the minor parent.

(2) If at the permanency planning hearing or at any time the court establishes the goal of adoption and counsel has not yet been appointed for a parent, the court shall appoint counsel to represent the parent as provided by subdivision (h)(1)(E) of this section.

(3)(A) Except as otherwise provided by this chapter, putative parents do not have a right to appointed counsel in dependency-neglect proceedings.

(B) A putative parent may be appointed counsel for a termination of parental rights proceeding if the court finds the following on the record:

(i) The putative parent is indigent;

(ii) The putative parent has established significant contacts with the juvenile so that putative rights attach;

(iii) Due process requires appointment of counsel for a full and fair hearing for the putative parent in the termination hearing; and

(iv) The putative parent requested counsel.

(4)(A) A putative parent has the burden to prove paternity and significant contacts with the child.

(B) The court shall make the findings required in subdivision (h)(3) of this section to determine whether a putative parent is entitled to appointed counsel at the termination hearing.

(C)(i) The termination petition shall include the putative parent as provided under § 9-27-311(c)(2)(B).

(ii) The court shall appoint counsel subject to subdivision (h)(3) of this section for the putative parent at any time the court establishes adoption as the case goal with a termination of parental rights petition to be filed.

(5)(A) The court shall order financially able parents or custodians to pay all or part of reasonable attorney's fees and expenses for court-appointed representation after review by the court of an affidavit of financial means completed and verified by the parent or custodian and a determination by the court of an ability to pay.

(B)(i) All moneys collected by the clerk under this subsection shall be retained by the clerk and deposited into a special fund to be known as the "Juvenile Court Representation Fund".

(ii) The court may direct that money from the fund be used in providing counsel for indigent parents or custodians at the trial level in dependency-neglect proceedings.

(iii) Upon a determination of indigency and a finding by the court that the fund does not have sufficient funds to pay reasonable attorney's fees and expenses incurred at the trial court level and state funds have been exhausted, the court may order the county to pay these reasonable fees and expenses until the state provides funding for counsel.

(6)(A) Appointment of counsel shall be made at a time sufficiently in advance of the court appearance to allow adequate preparation by appointed counsel and adequate consultation between the appointed counsel and the client.

(B)(i) When the first appearance before the court is an emergency hearing to remove custody under § 9-27-315, parents shall be appointed a parent counsel in a timely manner for meaningful representation until eligibility for appointed counsel is determined by the court under subdivision (h)(1)(B) of this section.

(ii) If in the interest of time or availability of qualified parent counsel it becomes necessary for a provisional parent counsel or counsel other than the parent counsel originally appointed under subdivision (h)(1)(B) of this section, a substitute parent counsel shall be appointed.

(7) The attorney for the parent or custodian shall be provided access to all records relevant to the juvenile's case, including without limitation school records, medical records, all court records relating to the juvenile and his or her family, and department records relating to the juvenile and his or her family, including those maintained electronically and in the Children's Reporting and Information System, to which the parent or custodian is entitled under state and federal law.

(8)(A) In all cases where a court has determined that appointed counsel for an indigent parent or custodian is necessary under this subsection, the court shall appoint counsel in compliance with federal law and Supreme Court Administrative Order No. 15.

(B) When a court orders payment of funds for parent counsel on behalf of an indigent parent or custodian from a state contract, the court shall make written findings in the appointment order in compliance with this section.

History. Acts 1989, No. 273, § 15; 1997, No. 1227, § 4; 1999, No. 1192, § 14; 1999, No. 1340, § 13; 2001, No. 987, § 2; 2001, No. 1503, § 4; 2003, No. 1166, § 9; 2003, No. 1809, § 2; 2005, No. 1990, § 8; 2011, No. 1175, § 4; 2013, No. 761, § 2; 2015, No. 1017, §§ 6-9; 2015, No. 1022, § 2; 2017, No. 861, §§ 2-4; 2019, No. 541, § 3; 2021, No. 815, § 1.

Amendments. The 2021 amendment rewrote (h)(1)(B); inserted (h)(1)(C) and redesignated the remaining subdivisions accordingly; inserted "putative parents" in (h)(1)(D)(i); substituted "subdivision (h)(1)(E)" for "subdivision (h)(1)(D)" in (h)(2); and rewrote (h)(3).

9-27-318. Filing and transfer to criminal division of circuit court.**CASE NOTES****ANALYSIS**

Construction With Other Law.
Transfer to Juvenile Division Denied.

Construction With Other Law.

State was not estopped from filing the motion to transfer; a common law doctrine, such as the election of remedies, could not override the clear and specific enactments of the General Assembly in passing subsection (e) of this section. *J.M. v. State*, 2021 Ark. App. 78, 618 S.W.3d 190 (2021).

Transfer to Juvenile Division Denied.

Circuit court properly denied a juvenile's motion to transfer his case to the juvenile division of circuit court because the circuit court heard and weighed all the testimony and evidence, and addressed each of the statutory factors, including the juvenile's mental health history, age, and

the intentional and violent nature of the acts he was alleged to have committed — he fired upon a vehicle occupied by individuals in a manner that created a potential for great personal injury or death and acted alone in the planning and participation of the alleged offenses. *Hurd v. State*, 2021 Ark. App. 180 (2021).

Denial of defendant's motion to transfer to juvenile court was affirmed; the trial court made written findings on all the statutory factors, the two counts of first-degree battery were serious charges, the alleged offenses were committed against persons in an aggressive and willful manner, and while the traumatic events in defendant's life viewed in a vacuum might have tended to favor juvenile jurisdiction, the serious and violent nature of the alleged offenses was alone sufficient to deny his motion. *Burnette v. State*, 2021 Ark. App. 223 (2021).

9-27-325. Hearings — Generally.

(a)(1)(A) All hearings shall be conducted by the judge without a jury, except as provided by the Extended Juvenile Jurisdiction Act, § 9-27-501 et seq.

(B) If a juvenile is designated an extended juvenile jurisdiction offender, the juvenile shall have a right to a jury trial at the adjudication.

(2) The juvenile shall be advised of the right to a jury trial by the court following a determination that the juvenile will be tried as an extended juvenile jurisdiction offender.

(3) The right to a jury trial may be waived by a juvenile only after being advised of his or her rights and after consultation with the juvenile's attorney.

(4) The waiver shall be in writing and signed by the juvenile and the juvenile's attorney.

(b)(1) The defendant need not file a written responsive pleading in order to be heard by the court.

(2) In dependency-neglect proceedings, if not appointed by the court in an order provided to all parties, counsel shall file a notice of appearance immediately upon acceptance of representation, with a copy to be served on the petitioner and all parties.

(c)(1) At the time set for hearing, the court may:

(A) Proceed to hear the case only if the juvenile is present or excused for good cause by the court; or

(B) Continue the case upon determination that the presence of an adult defendant is necessary.

(2) Upon determining that a necessary party is not present before the court, the court may:

(A) Issue an order for contempt if the juvenile was served with an order to appear; or

(B) Issue an order to appear, with a time and place set by the court for hearing, if the juvenile was served with a notice of hearing.

(d)(1) The court shall be a court of record.

(2) A record of all proceedings shall be kept in the same manner as other proceedings of circuit court and in accordance with rules promulgated by the Supreme Court.

(e)(1) Unless otherwise indicated, the Arkansas Rules of Evidence shall apply.

(2)(A) Upon motion of any party, the court may order that the father, mother, and child submit to scientific testing for drug or alcohol abuse.

(B) A written report of the test results prepared by the person conducting the test, or by a person under whose supervision or direction the test and analysis have been performed, certified by an affidavit subscribed and sworn to by him or her before a notary public, may be introduced in evidence without calling the person as a witness unless a motion challenging the test procedures or results has been filed within thirty (30) days before the hearing and bond is posted in an amount sufficient to cover the costs of the person's appearance to testify.

(C)(i) If contested, documentation of the chain of custody of samples taken from test subjects shall be verified by affidavit of one (1) person's witnessing the procedure or extraction, packaging, and mailing of the samples and by one (1) person's signing for the samples at the place where the samples are subject to the testing procedure.

(ii) Submission of the affidavits along with the submission of the test results shall be competent evidence to establish the chain of custody of those specimens.

(D) Whenever a court orders scientific testing for drug or alcohol abuse and one (1) of the parties refuses to submit to the testing, that refusal shall be disclosed at trial and may be considered civil contempt of court.

(f) Except as otherwise provided in this subchapter, the Arkansas Rules of Civil Procedure shall apply to all proceedings and the Arkansas Rules of Criminal Procedure shall apply to delinquency proceedings.

(g) All parties shall have the right to compel attendance of witnesses in accordance with the Arkansas Rules of Civil Procedure and the Arkansas Rules of Criminal Procedure.

(h)(1) The petitioner in all proceedings shall bear the burden of presenting the case at hearings.

(2)(A) The following burdens of proof shall apply:

(i) Proof beyond a reasonable doubt in delinquency hearings;

(ii) Proof by a preponderance of the evidence in dependency-neglect proceedings, except if subject to the Indian Child Welfare Act of 1978, 25 U.S.C. § 1901 et seq., family in need of services, and probation revocation hearings; and

(iii) Proof by clear and convincing evidence for hearings to terminate parental rights, except if subject to the Indian Child Welfare Act of 1978, 25 U.S.C. § 1901 et seq., transfer hearings, and in hearings to determine whether or not reunification services shall be provided.

(B) If the Indian Child Welfare Act of 1978, 25 U.S.C. § 1901 et seq., applies, the following burdens of proof shall apply:

(i) Clear and convincing evidence in probable cause, adjudication, review, and permanency planning hearings; and

(ii) Beyond a reasonable doubt in termination of parental rights hearings that are subject to the Indian Child Welfare Act of 1978, 25 U.S.C. § 1901 et seq.

(i)(1)(A) Except as provided by this section, all hearings involving allegations and reports of child maltreatment and all hearings involving cases of children in foster care shall be closed.

(B)(i) A member of the General Assembly may attend any hearing held under this subchapter, including a closed hearing, unless the court excludes the member of the General Assembly based on the:

(a) Best interest of the child; or

(b) Court's authority under the Arkansas Rules of Civil Procedure or the Arkansas Rules of Evidence.

(ii) Except as otherwise provided by law, a member of the General Assembly who attends a hearing in accordance with subdivision (i)(1)(B)(i) of this section shall not disclose information obtained during his or her attendance at the hearing.

(C)(i)(a) A Child Welfare Ombudsman may attend a hearing held under this subchapter, including a closed hearing.

(b) However, a court may exclude the Child Welfare Ombudsman from a hearing if:

(1) It is in the best interest of the child; or

(2) The reason for the exclusion is based on the authority of the court under the Arkansas Rules of Civil Procedure or the Arkansas Rules of Evidence.

(ii) Unless otherwise allowed by law, the Child Welfare Ombudsman shall not disclose information that he or she obtains through his or her attendance at a hearing held under this subchapter.

(D)(i) A relative, fictive kin, or individual with a connection to the family involved in a dependency-neglect proceeding may attend a hearing unless the court determines:

(a) The best interest of the child requires the relative, fictive kin, or individual with a connection to the family involved in the dependency-neglect proceeding to be excluded from the hearing; or

(b) It is within the authority of the court under the Arkansas Rules of Civil Procedure or the Arkansas Rules of Evidence to exclude the

relative, fictive kin, or individual with a connection to the family involved in the dependency-neglect proceeding from the hearing.

(ii) The court shall confirm the identity of each relative, fictive kin, or individual with a connection to the family involved in the dependency-neglect proceeding to determine if the relative, fictive kin, or individual with a connection to the family involved in the dependency-neglect proceeding should be excluded from the hearing.

(iii) A relative, fictive kin, or individual with a connection to the family involved in the dependency-neglect proceeding who is permitted to attend a hearing shall not disclose any information obtained during the hearing.

(E)(i) The court may allow an individual with an interest in attending a closed hearing in a dependency-neglect proceeding to attend the hearing if:

(a) It is in the best interest of the child; and

(b) The individual demonstrates a sincere and legitimate need to attend the hearing as determined by the court.

(ii) An individual who attends a hearing in accordance with subdivision (i)(1)(E)(i) of this section shall not disclose any information obtained during the hearing.

(F) An individual who discloses information in violation of subdivision (i)(1)(D)(iii) and subdivision (i)(1)(E)(ii) of this section is guilty of a Class C misdemeanor.

(2) All other hearings may be closed within the discretion of the court, except that in delinquency cases the juvenile shall have the right to an open hearing, and in adoption cases the hearings shall be closed as provided in the Revised Uniform Adoption Act, § 9-9-201 et seq.

(j) Except as provided in § 9-27-502, in any juvenile delinquency proceeding in which the juvenile's fitness to proceed is put in issue by any party or the court, the provisions of § 5-2-301 et seq. shall apply.

(k) In delinquency proceedings, juveniles are entitled to all defenses available to criminal defendants in circuit court.

(1)(1) The Department of Human Services shall provide to foster parents and preadoptive parents of a child in department custody notice of any proceeding to be held with respect to the child.

(2) Relative caregivers shall be provided notice by the original petitioner in the juvenile matter.

(3)(A) The court shall allow foster parents, preadoptive parents, and relative caregivers an opportunity to be heard in any proceeding held with respect to a child in their care but only as witnesses.

(B) Foster parents, adoptive parents, and relative caregivers shall not be made parties to the proceeding solely on the basis that the persons are entitled to notice and the opportunity to be heard.

(C) Foster parents, adoptive parents, and relative caregivers shall not be made parties to the proceeding when reunification remains the goal of the case.

(D) A foster parent, adoptive parent, preadoptive parent, or relative caregiver may not offer evidence to be considered by the court unless he or she is called as a witness.

(m)(1)(A) A grandparent shall be entitled to notice and shall be granted an opportunity to be heard in any dependency-neglect proceeding involving a grandchild who is twelve (12) months of age or younger when:

(i) The grandchild resides with this grandparent for at least six (6) continuous months prior to his or her first birthday;

(ii) The grandparent was the primary caregiver for and financial supporter of the grandchild during the time the grandchild resided with the grandparent;

(iii) The continuous custody occurred within one (1) year of the date the child custody proceeding was initiated; and

(iv) Notice to a grandparent under this subdivision (m)(1) shall be given by the department.

(B) A grandparent shall be entitled to notice and shall be granted an opportunity to be heard in any dependency-neglect proceeding involving a grandchild who is twelve (12) months of age or older when:

(i) The grandchild resides with this grandparent for at least one (1) continuous year regardless of age;

(ii) The grandparent was the primary caregiver for and financial supporter of the grandchild during the time the grandchild resided with the grandparent; and

(iii) The continuous custody occurred within one (1) year of the date the child custody proceeding was initiated.

(2) For purposes of this subsection, "grandparent" does not mean a parent of a putative father of a child.

(n)(1)(A) The department shall make diligent efforts to identify putative parents in a dependency-neglect proceeding.

(B) Diligent efforts shall include without limitation checking the Putative Father Registry.

(2)(A)(i) If the petitioner has named and served a putative parent under this section and § 9-27-311, the court shall resolve the party status of a putative parent and the rights of the putative parent as a putative father.

(ii) A court may consider the termination of the rights of a putative parent under § 9-27-341 if the court finds that the putative parent has established significant contacts and the rights of the putative parent as a putative father have attached.

(B) The court shall provide a putative parent the opportunity to be heard regarding his or her efforts in establishing paternity and his or her significant contacts with regard to the juvenile involved in the dependency-neglect proceedings.

(C)(i) The court may order deoxyribonucleic acid (DNA) testing at any time.

(ii) A court may establish paternity or determine whether a putative parent is a parent as defined in § 9-27-303 without a deoxyribonucleic acid (DNA) test being ordered by the court or performed.

(D) If there is more than one (1) putative parent of the juvenile, the court shall order a deoxyribonucleic acid (DNA) test of each identified putative parent to determine the biological parent of the juvenile.

(E) A deoxyribonucleic acid (DNA) test establishing a putative parent as the biological parent of a juvenile is sufficient evidence on which the court may adjudicate paternity, establish that the putative parent is a parent for the purposes of this subchapter, and enter a decree of paternity.

(3) A putative parent has the burden to prove paternity and significant contacts with the juvenile.

(4)(A) Except as provided under § 9-27-311, a putative parent shall be named as a party if the circuit court determines that the putative parent:

(i) Has established paternity and the circuit court enters an order establishing the putative parent as the parent for the purposes of this subchapter and directs that the parent be added to the case as a party defendant; or

(ii) Has established significant contacts with the juvenile and the circuit court enters an order that putative parent rights have attached and the putative parent shall be added to the case as a party defendant.

(B)(i) If the petitioner has named and served a putative parent under this section and § 9-27-311 and the circuit court finds that the putative parent has established paternity, the court shall:

(a) Enter an order establishing the putative parent as a parent for the purposes of this subchapter; and

(b) Maintain the parent as a party defendant.

(ii) If the petitioner has named and served a putative parent under this section and § 9-27-311 and the circuit court finds that the putative parent has established significant contacts with the juvenile, the court shall:

(a) Enter an order stating that the rights of the putative parent have attached; and

(b) Maintain the putative parent as a party defendant.

(C) If the circuit court finds that the putative parent, after being given notice and opportunity to be heard, has not established paternity or significant contacts, the circuit court shall:

(i) Find that the putative parent is not a parent for the purposes of this subchapter;

(ii) Find that the rights of the putative parent have not attached; and

(iii) Dismiss the putative parent from the case and enter an order finding that no further notice, including notice of an adoption petition concerning the juvenile, is required to be provided to the putative parent.

(5) The rights of a putative parent to appointed counsel are subject to § 9-27-316(h)(3).

(o)(1) If the court determines that the health and safety of the juvenile can be adequately protected and it is in the best interest of the

child, unsupervised visitation may occur between a juvenile and a parent.

(2)(A) A petitioner has the burden of proving at every hearing that unsupervised visitation is not in the best interest of a child.

(B) If the court determines that unsupervised visitation between a juvenile and a parent is not in the best interest of the child, visitation between the juvenile and the parent shall be supervised.

(C)(i) A rebuttable presumption that unsupervised visitation is in the best interest of the juvenile applies at every hearing.

(ii) The burden of proof to rebut the presumption is proof by a preponderance of the evidence.

(D)(i) If the court orders supervised visitation, the parent from whom custody of the juvenile has been removed shall receive a minimum of four (4) hours of supervised visitation per week.

(ii) The court may order less than four (4) hours of supervised visitation if the court determines that the supervised visitation:

(a) Is not in the best interest of the juvenile; or

(b) Will impose an extreme hardship on one (1) of the parties.

(p) When visitation is ordered between a juvenile and the parent:

(1)(A) A parent's positive result from a drug test is insufficient to deny the parent visitation with a juvenile.

(B) If at the time that visitation between the parent and a juvenile occurs a parent is under the influence of drugs or alcohol, exhibits behavior that may create an unsafe environment for a child, or appears to be actively impaired, the visitation may be cancelled; and

(2) A relative or fictive kin may transport a juvenile to and from visits with a parent if:

(A) It is in the best interest of a child;

(B) The relative or fictive kin submits to a background check and a child maltreatment registry check; and

(C) The relative or fictive kin meets the driving requirements established by the department.

(q)(1) A court shall set a hearing to address the entry of a written order if:

(A) The written order is not provided to the court for entry within the time specified under this subchapter; and

(B) A party files a motion for a hearing to address the entry of the written order.

(2)(A) The court shall conduct a hearing to address the entry of the written order within thirty (30) days from the date on which the motion for a hearing to address the entry of the written order is filed.

(B) A hearing to address the entry of a written order may be the next scheduled hearing in the proceeding if the hearing to address the entry of the written order is being held within thirty (30) days from the date on which the motion for a hearing to address the entry of the written order is filed.

(C) The court is not required to conduct a hearing to address the entry of a written order if the written order is submitted to the court.

(3) The court shall reassign the preparation of the written order as needed.

History. Acts 1989, No. 273, § 24; 1993, No. 758, § 5; 1995, No. 533, § 6; 1997, No. 1118, § 2; 1999, No. 401, § 5; 1999, No. 1192, § 17; 2001, No. 987, § 3; 2001, No. 1497, § 2; 2001, No. 1503, § 5; 2003, No. 1166, § 14; 2003, No. 1319, § 12; 2007, No. 587, § 12; 2009, No. 1311, § 1; 2011, No. 591, § 6; 2011, No. 1175, § 5; 2013, No. 1055, § 9; 2015, No. 1022, § 3; 2017, No. 701, § 1; 2017, No. 1111, § 2; 2019, No. 329, § 3; 2019, No. 541, § 4; 2019, No. 558, §§ 1-3; 2019, No. 945, § 3; 2021, No. 738, §§ 1, 2; 2021, No. 813, § 4; 2021, No. 814, §§ 2, 3.

Amendments. The 2021 amendment by No. 738 added “Except as provided by this section” in (i)(1)(A); and added (i)(1)(D) through (F).

The 2021 amendment by No. 813 deleted former (n)(2) and (n)(6) and redesignated the remaining subdivisions accordingly; in (n)(2)(A)(ii), inserted “putative

parent has established significant contacts and the” and deleted “under subdivision (n)(5) of this section” following “father”; substituted “the juvenile involved in the” for “his or her children in” in (n)(2)(B); inserted present (n)(2)(C) and (E) and redesignated the remaining subdivisions accordingly; rewrote (n)(2)(D); substituted “juvenile” for “child” in (n)(3); in the introductory language of (n)(4)(A), deleted “subdivision (n)(2)(A) of this section and” preceding “§ 9-27-311”, deleted “not” following “shall”, and substituted “if” for “unless”; in the introductory language of (n)(4)(C), inserted “after being given notice and opportunity to be heard” and substituted “or” for “and”; and rewrote (n)(4)(C)(iii).

The 2021 amendment by No. 814 added “but only as witnesses” at the end of (l)(3)(A); and added (l)(3)(D).

9-27-329. Disposition hearing.

CASE NOTES

ANALYSIS

Least Restrictive Disposition.
Placement With Relatives.

Least Restrictive Disposition.

Circuit court chose the least restrictive plan consistent with the best interest of the children where the children had been in foster care for 16 months at the time of the termination hearing and it was in the children’s best interest to work toward permanency rather than allow more time for the father to begin completing the case plan. Moreover, the children’s need for permanency outweighed the father’s request for time to complete the case plan, especially since he was still incarcerated. *Honeycutt v. Ark. Dep’t of Human Servs.*, 2021 Ark. App. 6, 615 S.W.3d 741 (2021).

Placement With Relatives.

Trial court did not clearly err when it determined that termination of parental

rights was in the children’s best interest; although the children were temporarily placed in the care of their great-aunt and great-uncle, the great-aunt was noncommittal when asked whether she would consider permanent custody in lieu of termination and adoption. *Best v. Ark. Dep’t of Human Servs.*, 2020 Ark. App. 485, 611 S.W.3d 690 (2020).

Circuit court clearly erred by failing to consider placement with the paternal grandmother as a less restrictive alternative to termination; the circuit court made no mention of the grandmother’s request for placement and once the court terminated the father’s parental rights, no relative preference could be given to her. *Borah v. Ark. Dep’t of Human Servs.*, 2020 Ark. App. 491, 612 S.W.3d 749 (2020).

Cited: *King v. Ark. Dep’t of Human Servs.*, 2021 Ark. App. 126 (2021).

9-27-337. Six-month reviews required.

(a)(1) The court shall review every case of dependency-neglect or families in need of services when:

(A) A juvenile is placed by the court in the custody of the Department of Human Services or in another out-of-home placement until there is a permanent order of custody, guardianship, or other permanent placement for the juvenile; or

(B) A juvenile is returned to the parent from whom the child was removed, another fit parent, guardian, or custodian and the court has not discontinued orders for family services.

(2)(A) The first six-month review shall be held no later than six (6) months from the date of the original out-of-home placement of the child and shall be scheduled by the court following the adjudication and disposition hearing.

(B) It shall be reviewed every six (6) months thereafter until permanency is achieved.

(3) A six-month review hearing shall not be required for a juvenile who:

(A) Is over eighteen (18) years of age; and

(B) Has elected to remain in extended foster care or to return to extended foster care under § 9-27-306(a)(1)(B)(ii).

(b) The court may require these cases to be reviewed prior to the sixth-month review hearing, and the court shall announce the date, time, and place of the hearing.

(c) At any time during the pendency of any case of dependency-neglect or families in need of services in which an out-of-home placement has occurred, any party may request the court to review the case, and the party requesting the hearing shall provide reasonable notice to all parties.

(d) At any time during the course of a case, the department, the attorney ad litem, or the court can request a hearing on whether or not reunification services should be terminated pursuant to § 9-27-327(a)(2).

(e)(1) In each case in which a juvenile has been placed in an out-of-home placement, the court shall conduct a hearing to review the case sufficiently to determine the future status of the juvenile based upon the best interest of the juvenile.

(2)(A) The court shall determine and include in its orders the following:

(i) Whether the case plan, services, and placement meet the special needs and best interest of the juvenile, with the juvenile's health, safety, and educational needs specifically addressed;

(ii) Whether the state has made reasonable efforts to provide family services;

(iii) Whether the parent or parents or person from whom custody was removed has demonstrated progress toward the goals of the case plan and whether completion of the goals has benefited the parent in remedying the issues that prevent the safe return of the juvenile;

(iv) Whether the case plan is moving toward an appropriate permanency plan under § 9-27-338 for the juvenile;

(v) Whether the visitation plan is appropriate for the juvenile, the parent or parents, and any siblings, if separated; and

(vi)(a) Whether the juvenile should be returned to his or her parent or parents and whether or not the juvenile's health and safety can be protected by his or her parent or parents if returned home, either permanently or for a trial placement.

(b) At any time the court determines that the health and safety of the child can be adequately protected and it is in the best interest of the child, the court shall return the child to a parent or parents from whom custody was removed.

(B)(i) The court may order any studies, evaluations, or post-disposition reports, if needed.

(ii) All studies, evaluations, or post-disposition reports shall be provided in writing to all parties and counsel at least two (2) days before the review hearing.

(iii) All parties shall be given a fair opportunity to controvert any part of a study, evaluation, or post-disposition report.

(3)(A) In making its findings, the court shall consider the following:

(i) The extent of compliance with the case plan, including without limitation a review of the department's care for the health, safety, and education of the juvenile while he or she has been in an out-of-home placement;

(ii) The extent of progress that has been made toward alleviating or mitigating the causes of the out-of-home placement;

(iii) Whether the juvenile should be returned to his or her parent or parents and whether or not the juvenile's health and safety can be protected by his or her parent or parents if returned home; and

(iv) An appropriate permanency plan under § 9-27-338 for the juvenile, including concurrent planning.

(B) Incompletion of the case plan under subdivision (e)(3)(A)(i) of this section is an insufficient reason by itself to deny the juvenile's return to the family home.

(f) Each six-month review hearing shall be completed, and the written order under subsection (e) of this section shall be filed by the court or by a party or a party's attorney as designated by the court and distributed to the parties within thirty (30) days of the date of the hearing or before the next hearing, whichever is sooner.

History. Acts 1989, No. 273, § 36; 2005, No. 1990, § 17; 2007, No. 587, § 20; 1995, No. 404, § 1; 1995, No. 533, § 12; 2013, No. 490, § 1; 2017, No. 701, § 4; 1995, No. 1337, § 8; 1997, No. 1227, § 11; 2021, No. 791, § 3. 1999, No. 401, § 12; 2001, No. 987, § 5; **Amendments.** The 2021 amendment added (a)(3). 2001, No. 1503, § 11; 2005, No. 1191, § 3;

9-27-338. Permanency planning hearing.**CASE NOTES**

Cited: Noe v. Ark. Dep't of Human Servs., 2021 Ark. App. 149 (2021).

9-27-341. Termination of parental rights — Definition.

(a)(1)(A) This section shall be a remedy available only to the Department of Human Services or a court-appointed attorney ad litem.

(B) This section shall not be available for private litigants or other agencies.

(2)(A) This section shall be used only in cases in which the department is attempting to clear a juvenile for permanent placement by terminating the parental rights of a parent and putative parent based on the definition of “parent” and “putative father” under § 9-27-303.

(B) This section shall not be used to terminate the rights of a putative parent if a court of competent jurisdiction has previously determined under § 9-27-325 that the rights of the putative parent have not attached.

(3) The intent of this section is to provide permanency in a juvenile's life in all instances in which the return of a juvenile to the family home is contrary to the juvenile's health, safety, or welfare and it appears from the evidence that a return to the family home cannot be accomplished in a reasonable period of time as viewed from the juvenile's perspective.

(4) The court shall rely upon the record of the parent's compliance in the entire dependency-neglect case and evidence presented at the termination hearing in making its decision on whether it is in the best interest of the juvenile to terminate parental rights.

(b)(1)(A) The circuit court may consider a petition to terminate parental rights if the court finds that there is an appropriate permanency placement plan for the juvenile.

(B) This section does not require that a permanency planning hearing be held as a prerequisite to the filing of a petition to terminate parental rights or as a prerequisite to the court's considering a petition to terminate parental rights.

(2)(A) The petitioner shall serve the petition to terminate parental rights as required under Rule 5 of the Arkansas Rules of Civil Procedure, except:

(i) Service shall be made as required under Rule 4 of the Arkansas Rules of Civil Procedure if the:

(a) Parent was not served under Rule 4 of the Arkansas Rules of Civil Procedure at the initiation of the proceeding;

(b) Parent is not represented by an attorney; or

(c) Initiation of the proceeding was more than two (2) years ago; or

(ii) When the court orders service of the petition to terminate parental rights as required under Rule 4 of the Arkansas Rules of Civil Procedure.

(B) The petitioner shall check with the Putative Father Registry if the name or whereabouts of the putative father is unknown.

(3) An order forever terminating parental rights shall be based upon a finding by clear and convincing evidence:

(A) That it is in the best interest of the juvenile, including consideration of the following factors:

(i) The likelihood that the juvenile will be adopted if the termination petition is granted; and

(ii) The potential harm, specifically addressing the effect on the health and safety of the child, caused by returning the child to the custody of the parent, parents, or putative parent or parents; and

(B) Of one (1) or more of the following grounds:

(i)(a) That a juvenile has been adjudicated by the court to be dependent-neglected and has continued to be out of the custody of the parent for twelve (12) months and, despite a meaningful effort by the department to rehabilitate the parent and correct the conditions that caused removal, those conditions have not been remedied by the parent.

(b) That a juvenile has been adjudicated by the court to be dependent-neglected and has continued out of the home of the noncustodial parent for twelve (12) months and, despite a meaningful effort by the department to rehabilitate the parent and correct the conditions that prevented the child from safely being placed in the parent's home, the conditions have not been remedied by the parent.

(c) It is not necessary that the twelve-month period referenced in subdivision (b)(3)(B)(i)(a) of this section immediately precede the filing of the petition for termination of parental rights or that it be for twelve (12) consecutive months;

(ii)(a) The juvenile has lived outside the home of the parent for a period of twelve (12) months, and the parent has willfully failed to provide significant material support in accordance with the parent's means or to maintain meaningful contact with the juvenile.

(b) To find willful failure to maintain meaningful contact, it must be shown that the parent was not prevented from visiting or having contact with the juvenile by the juvenile's custodian or any other person, taking into consideration the distance of the juvenile's placement from the parent's home.

(c) Material support consists of either financial contributions or food, shelter, clothing, or other necessities when the contribution has been requested by the juvenile's custodian or ordered by a court of competent jurisdiction.

(d) It is not necessary that the twelve-month period referenced in subdivision (b)(3)(B)(ii)(a) of this section immediately precede the filing of the petition for termination of parental rights or that it be for twelve (12) consecutive months;

(iii)(a) The parent is not the biological parent of the juvenile and the welfare of the juvenile can best be served by terminating the parental rights of the parent.

(b) A termination of parental rights under subdivision (b)(3)(B)(iii)(a) of this section shall not be considered an involuntary termination;

(iv) A parent has abandoned the juvenile;

(v)(a) A parent has executed consent to termination of parental rights or adoption of the juvenile, subject to the court's approval.

(b) If the consent is executed under oath by a person authorized to administer the oath, the parent is not required to execute the consent in the presence of the court unless required by federal law or federal regulations;

(vi)(a) The court has found the juvenile or a sibling dependent-neglected as a result of neglect or abuse that could endanger the life of the child, sexual abuse, or sexual exploitation, any of which was perpetrated by the juvenile's parent or parents or stepparent or stepparents.

(b) Such findings by the juvenile division of circuit court shall constitute grounds for immediate termination of the parental rights of one (1) or both of the parents;

(vii)(a) That other factors or issues arose subsequent to the filing of the original petition for dependency-neglect that demonstrate that placement of the juvenile in the custody of the parent is contrary to the juvenile's health, safety, or welfare and that, despite the offer of appropriate family services, the parent has manifested the incapacity or indifference to remedy the subsequent issues or factors or rehabilitate the parent's circumstances that prevent the placement of the juvenile in the custody of the parent.

(b) The department shall make reasonable accommodations in accordance with the Americans with Disabilities Act of 1990, 42 U.S.C. § 12101 et seq., to parents with disabilities in order to allow them meaningful access to reunification and family preservation services.

(c) For purposes of this subdivision (b)(3)(B)(vii), the inability or incapacity to remedy or rehabilitate includes, but is not limited to, mental illness, emotional illness, or mental deficiencies.

(d) Subdivision (b)(3)(B)(vii)(a) of this section does not apply if the factors or issues have not been adjudicated by the court or the parent is not provided with proper notice of the factors or issues;

(viii) The parent is sentenced in a criminal proceeding for a period of time that would constitute a substantial period of the juvenile's life;

(ix)(a) The parent is found by a court of competent jurisdiction, including the juvenile division of the circuit court, to:

(1) Have committed murder or manslaughter of any juvenile or to have aided or abetted, attempted, conspired, or solicited to commit the murder or manslaughter;

(2) Have committed a felony battery that results in serious bodily injury to any juvenile or to have aided or abetted, attempted, conspired, or solicited to commit felony battery that results in serious bodily injury to any juvenile;

(3)(A) Have subjected any juvenile to aggravated circumstances.

(B) "Aggravated circumstances" means:

(i) A juvenile has been abandoned, chronically abused, subjected to extreme or repeated cruelty, sexually abused, or a determination has been or is made by a judge that there is little likelihood that services to the family will result in successful reunification;

(ii) A juvenile has been removed from the custody of the parent or guardian and placed in foster care or in the custody of another person three (3) or more times in the last fifteen (15) months; or

(iii) A child or a sibling has been neglected or abused to the extent that the abuse or neglect could endanger the life of the child;

(4)(A) Have had his or her parental rights involuntarily terminated as to a child.

(B) It is an affirmative defense to the termination of parental rights based on a prior involuntary termination of parental rights that the parent has remedied the conditions that caused the prior involuntary termination of parental rights; or

(5) Have abandoned an infant, as defined in § 9-27-303.

(b) This subchapter does not require reunification of a surviving child with a parent who has been found guilty of any of the offenses listed in subdivision (b)(3)(B)(ix)(a) of this section; or

(x)(a) A putative parent who fails to establish or maintain meaningful contacts with his or her juvenile after:

(1) Being named and served as a party in a dependency-neglect proceeding;

(2) Receiving notice of a dependency-neglect proceeding under § 9-27-311 or § 9-27-325; and

(3) The court finds that the rights of the putative parent with regard to the juvenile have attached.

(b) To find willful failure to maintain meaningful contact, it shall be shown that the putative parent was not prevented from visiting or having contact with the juvenile by the custodian of the juvenile or any other person, taking into consideration the distance of the juvenile's placement from the putative parent's home.

(c) A termination of parental rights under subdivision (b)(3)(B)(x)(a) of this section shall not be considered an involuntary termination.

(d)(1) Subdivision (b)(3)(B)(x)(a) of this section does not apply to a putative parent whose rights have not attached to a juvenile.

(2) If a court finds that the rights of the putative parent have not attached to the juvenile, the court shall dismiss the putative parent from the petition to terminate parental rights and enter an order finding that no further notice is due to the putative parent.

(c)(1) An order terminating the relationship between parent and juvenile:

(A) Divests the parent and the juvenile of all legal rights, powers, and obligations with respect to each other, including the right to withhold consent to adoption, except the right of the juvenile to inherit from the parent, that is terminated only by a final order of adoption; and

(B)(i) Divests a putative parent and the juvenile of all rights, powers, and obligations with respect to the putative parent and the juvenile if the rights of the putative parent have attached under § 9-27-325(n) before or during the termination proceeding.

(ii) The divesting of all the rights, powers, and obligations of the putative parent and the juvenile shall be based on the same authority, requirements, limitations, and other provisions that apply to the termination of the rights of a parent, including without limitation the provision requiring the dismissal of a putative parent as a party to a case without further notice to the putative parent.

(2)(A) Termination of the relationship between a juvenile and one parent shall not affect the relationship between the juvenile and the other parent if those rights are legally established.

(B) A court may terminate the rights of one parent and not the other parent if the court finds that it is in the best interest of the child.

(3) An order terminating parental rights under this section:

(A) May authorize the department to consent to adoption of the juvenile; and

(B) Dismisses the parent or putative parent subject to the termination of parental rights as a party to the case without further notice to the parent or putative parent required.

(d)(1) The court shall conduct and complete a termination of parental rights hearing within ninety (90) days from the date the petition for termination of parental rights is filed unless continued for good cause as articulated in the written order of the court.

(2)(A) The court may continue a termination of parental rights hearing for up to one hundred eighty (180) days from the date the petition for termination of parental rights is filed in extraordinary circumstances.

(B) As used in this subdivision (d)(2), "extraordinary circumstances" includes without limitation the following circumstances:

(i) The Supreme Court orders the suspension of in-person court proceedings; and

(ii) One (1) of the following has occurred:

(a) The President of the United States has declared a national emergency; or

(b) The Governor has declared a state of emergency or a statewide public health emergency.

(e) A written order shall be filed by the court or by a party or party's counsel as designated by the court within thirty (30) days of the date of the termination hearing or before the next hearing, whichever is sooner.

(f) After the termination of parental rights hearing, the court shall review the case at least every six (6) months, and a permanency

planning hearing shall be held each year following the initial permanency hearing until permanency is achieved for that juvenile.

(g)(1)(A) A parent may withdraw consent to termination of parental rights within ten (10) calendar days after it was signed by filing an affidavit with the circuit clerk in the county designated by the consent as the county in which the termination of parental rights will be filed.

(B) If the ten-day period ends on a weekend or legal holiday, the person may file the affidavit the next working day.

(C) No fee shall be charged for the filing of the affidavit.

(2) The consent to terminate parental rights shall state that the person has the right of withdrawal of consent and shall provide the address of the circuit clerk of the county in which the termination of parental rights will be filed.

(h) Upon the entry of an order terminating parental rights the:

(1) Department is relieved of all responsibility for providing reunification services to the parent whose parental rights are terminated;

(2) Appointed parent counsel is relieved of his or her representation of the parent whose parental rights are terminated except as provided under Rules 6-9 and 6-10 of the Rules of the Supreme Court and Court of Appeals of the State of Arkansas;

(3) Appointed parent counsel shall be reappointed to represent a parent who successfully appeals the termination of his or her parental rights if the parent is indigent; and

(4) Parent whose parental rights are terminated or a putative parent who after receiving notice is determined by a court to not have rights attached to the juvenile is not entitled to:

(A) Notice of any court proceeding concerning the juvenile, including a petition for adoption concerning the juvenile; and

(B) An opportunity to be heard in any court proceeding concerning the juvenile.

History. Acts 1989, No. 273, § 40; 1991, No. 557, § 1; 1995, No. 811, § 1; 1995, No. 909, § 1; 1995, No. 1335, § 7; 1995, No. 1337, § 10; 1997, No. 1227, § 13; 1999, No. 401, § 14; 1999, No. 1306, § 1; 2001, No. 1503, § 14; 2003, No. 1166, § 19; 2003, No. 1319, §§ 23, 24; 2005, No. 1990, § 18; 2007, No. 587, §§ 21-23; 2009, No. 956, §§ 20, 21; 2011, No. 792, § 10; 2011, No. 1175, § 9; 2013, No. 1055, §§ 11, 20; 2015, No. 1022, § 4; 2015, No. 1024, §§ 5, 6; 2017, No. 995, § 1; 2017, No. 1111, §§ 3, 4; 2019, No. 541, §§ 5-8;

2019, No. 985, §§ 1, 2; 2020, No. 144, § 41; 2021, No. 813, §§ 5-7.

Amendments. The 2021 amendment added (b)(3)(B)(iii)(b) and redesignated former (b)(3)(B)(iii) as (b)(3)(B)(iii)(a); rewrote (b)(3)(B)(x); inserted "or a putative parent who after receiving notice is determined by a court to not have rights attached to the juvenile" in the introductory language of (h)(4); and inserted "including a petition for adoption concerning the juvenile" in (h)(4)(A).

CASE NOTES

ANALYSIS

Aggravated Circumstances.

Best Interest of Juvenile.

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Aggravated Circumstances.

Termination of a father's parental rights based on aggravated circumstances was affirmed where the child had severe medical conditions that required daily monitoring and proper caretaker hygiene and training, the father, who was cognitively slow, failed to grasp the severity of the child's medical conditions, and despite an enormous amount of assistance over a 13-month period, he was unable to assist with the child's complex medical needs, complete basic parenting tasks, or provide a clean and safe living environment for the child. *Watkins v. Ark. Dep't of Human Servs.*, 2021 Ark. App. 55 (2021).

Best Interest of Juvenile.

Sufficient evidence supported the circuit court's finding that termination of parental rights was in the children's best interest where the father was represented by counsel for 15 months and had been informed by the Department of Human Services (DHS) what he would need to do to gain custody of his children, DHS provided him with telephone visitation, which he ceased exercising, he never came to Arkansas to see his children during the case and had never met his son in person, and he failed to provide stable, suitable, and sufficient income and housing to properly care for the children. *Louissaint v. Ark. Dep't of Human Servs.*, 2020 Ark. App. 494, 611 S.W.3d 709 (2020).

Evidence was sufficient to support the trial court's determination that termination of the mother's parental rights was in the children's best interest because her behaviors over the course of the entire case did not show enough stability to render the trial court's finding that the mother posed a risk of potential harm to

the children clearly erroneous. The mother did not follow the recommended drug treatment, she tested positive for THC and refused to submit to a drug screen one week prior to the termination hearing, and she failed to attend counseling as ordered. *McCloud v. Ark. Dep't of Human Servs.*, 2021 Ark. App. 62, 618 S.W.3d 170 (2021).

Termination of a mother's parental rights was in the child's best interest where the child had been removed from the mother's care due to a severe, unexplained head injury and malnourishment, the mother had no contact with the child for seven months, the mother had been located only after she had another child and a dependency-neglect proceeding had been initiated as to that child, and in the months since her reappearance, she had not made meaningful progress toward reunification. *M.S. v. Ark. Dep't of Human Servs.*, 2021 Ark. App. 77, 617 S.W.3d 731 (2021).

Trial court did not clearly err in finding that termination of a mother's parental rights was in her children's best interest because the mother tested positive for methamphetamine several times, and there was little to no evidence of the bond shared by her two children; the separation of the children was not a foregone conclusion, and there was no indication the trial court did not take into consideration the sibling relationship before making its decision. *Perry v. Ark. Dep't of Human Servs.*, 2021 Ark. App. 193 (2021).

Failure to Remedy.

Termination of the father's parental rights was proper because his argument that he was not identified as a "parent" for 12 months prior to the termination was unavailing as a domestic relations order entered into evidence showed he was declared the children's father in April 2018, over two years before the termination petition was filed; and the father had failed to correct the conditions that prevented the children from safely being placed in his home. *Fowler v. Ark. Dep't of Human Servs.*, 2021 Ark. App. 159 (2021).

Father.

In a termination of parental rights case, the circuit court did not err in finding that

appellant was the child's father because appellant's DNA results confirming him as the child's biological father were introduced at the May 1, 2019, review hearing; he had participated in services through the Department of Human Services, had been present at every hearing, and was allowed to testify, question witnesses, and participate in the case; and he was appointed parent counsel to represent his legal interests for the termination hearing. *Johnson v. Ark. Dep't of Human Servs.*, 2020 Ark. App. 533 (2020).

Indian Child Welfare Act.

No party appealed the circuit court's findings in the adjudication order that the Indian Child Welfare Act did not apply or that neither the mother nor the child were members of an Indian tribe, and thus the issue was not preserved for review in the appeal of the termination of parental rights. A parent's failure to appeal rulings made in an adjudication order precludes appellate review of those findings in an appeal from a subsequent order. *Borah v. Ark. Dep't of Human Servs.*, 2020 Ark. App. 491, 612 S.W.3d 749 (2020).

In a parental rights termination case involving the Indian Child Welfare Act, the finding that returning the child to the mother's custody would likely result in serious emotional or physical damage to the child was supported by sufficient evidence because the mother had a history of failing to protect the child from sexual abuse; the mother refused to believe the child's reports of abuse against the father, she placed the child in harm's way when she regained temporary custody, and she allowed sex offenders to be around the child despite being ordered not to have men in the home. *Garris v. Ark. Dep't of Human Servs.*, 2021 Ark. App. 118, 619 S.W.3d 67 (2021).

Department of Human Services reasonably pursued the goal of "preserving the Indian family" because it provided extensive services and support to the mother, who was the only parent in a position to regain custody; throughout the case, the circuit court found that the father's prison sentence, his history of sexual abuse of young girls, and a no-contact order made him an unsuitable parent for placement or visitation. *Garris v. Ark. Dep't of Human Servs.*, 2021 Ark. App. 118, 619 S.W.3d 67 (2021).

Placement With Relatives.

Trial court did not clearly err when it determined that termination of parental rights was in the children's best interest; although the children were temporarily placed in the care of their great-aunt and great-uncle, the great-aunt was noncommittal when asked whether she would consider permanent custody in lieu of termination and adoption. *Best v. Ark. Dep't of Human Servs.*, 2020 Ark. App. 485, 611 S.W.3d 690 (2020).

Circuit court clearly erred by failing to consider placement with the paternal grandmother as a less restrictive alternative to termination; the circuit court made no mention of the grandmother's request for placement and once the court terminated the father's parental rights, no relative preference could be given to her. *Borah v. Ark. Dep't of Human Servs.*, 2020 Ark. App. 491, 612 S.W.3d 749 (2020).

Terminating a mother's parental rights was in the child's best interest where the child's relationship with the purported grandparents had no bearing because they were not the child's relatives as defined by §§ 9-28-105 and 9-28-108(a). Specifically, they were the parents of the putative father whose parental rights were never established and had been terminated. *M.S. v. Ark. Dep't of Human Servs.*, 2021 Ark. App. 77, 617 S.W.3d 731 (2021).

Trial court did not err in terminating the mother's parental rights, as the mother was resistant to learning better and safer methods to care for the child and lacked insight and understanding of the child's complex and severe conditions or how to care for her. While placing a child with a relative can be a less restrictive alternative to termination, the child was never in a relative's custody and there was no demonstration of a strong bond with the grandmother. The grandmother was effectively a stranger to the child, who had profound special needs. *King v. Ark. Dep't of Human Servs.*, 2021 Ark. App. 126 (2021).

In a parental rights termination case, the mother's less-restrictive-alternative argument failed, in part because the grandparents were not willing to accept guardianship and their testimony that they wanted to adopt rather obtain a subsidized guardianship was unequivocal. *Noe v. Ark. Dep't of Human Servs.*, 2021 Ark. App. 149 (2021).

Potential Harm.

Father's challenge to the potential harm prong of the circuit court's best-interest finding was rejected where his assertion that he could be ready to parent the children in the same amount of time that the adoption process took place was contingent on his release from prison, completion of the case plan, and obtaining a safe home for the children. The need for permanency outweighed the father's request for more time. *Honeycutt v. Ark. Dep't of Human Servs.*, 2021 Ark. App. 6, 615 S.W.3d 741 (2021).

In a termination of parental rights action, the trial court's finding of potential harm if the children were returned to the mother was supported by evidence that the mother continued to use drugs and failed to complete the drug treatment program, failed to complete parenting classes and domestic violence classes, and did not have stable housing or income. *Jackson v. Ark. Dep't of Human Servs.*, 2021 Ark. App. 156 (2021).

Subsequent Factors.

Termination of the father's parental rights was proper under the subsequent-factors ground and in the child's best interests because he failed to comply with the circuit court's orders to attend and complete parenting classes and continued to use drugs; and his continued drug use throughout the case was indisputable evidence of potential harm. *Johnson v. Ark. Dep't of Human Servs.*, 2020 Ark. App. 533 (2020).

Substance Abuse.

Evidence was sufficient to terminate a mother's parental rights because the

mother had left the children with inappropriate caregivers, the mother would not allow access to her home despite her vehicle being in the driveway and sounds of someone inside the residence, the mother tested positive for methamphetamine, the substance abuse treatment provider could not reach the mother on the number that it had been provided, and despite submitting to the assessment, the mother did not attend any sessions of substance abuse treatment or otherwise complete treatment thereafter. *Robinson v. Ark. Dep't of Human Servs.*, 2021 Ark. App. 208 (2021).

Termination Proper.

Termination of parental rights upheld. *Martinez v. Ark. Dep't of Human Servs.*, 2020 Ark. App. 484, 611 S.W.3d 225 (2020); *Baker v. Ark. Dep't of Human Servs.*, 2020 Ark. App. 507 (2020); *Morgan v. Ark. Dep't of Human Servs.*, 2021 Ark. App. 101, 617 S.W.3d 743 (2021); *Ring v. Ark. Dep't of Human Servs.*, 2021 Ark. App. 146 (2021); *Harris v. Ark. Dep't of Human Servs.*, 2021 Ark. App. 158 (2021); *Scott v. Ark. Dep't of Human Servs.*, 2021 Ark. App. 200 (2021).

Termination of parental rights upheld (no-merit brief). *Snider v. Ark. Dep't of Human Servs.*, 2020 Ark. App. 502, 612 S.W.3d 199 (2020); *Snider v. Ark. Dep't of Human Servs.*, 2020 Ark. App. 508 (2020); *Hendrickson v. Ark. Dep't of Human Servs.*, 2020 Ark. App. 519 (2020); *Garner v. Ark. Dep't of Human Servs.*, 2021 Ark. App. 178 (2021); *Taylor v. Ark. Dep't of Human Servs.*, 2021 Ark. App. 203 (2021).

9-27-363. Foster youth transition.

(a) The General Assembly finds that:

(1) A juvenile in foster care should have a family for a lifetime, but too many juveniles in foster care reach the age of majority without being successfully reunited with their biological families and without the security of permanent homes;

(2) A juvenile in foster care who is approaching the age of majority shall be provided the opportunity to be actively engaged in the planning of his or her future; and

(3) The Department of Human Services shall:

(A) Include the juvenile in the process of developing a plan to transition the child into adulthood;

(B) Empower the juvenile with information about all of the options and services available;

(C) Provide the juvenile with the opportunity to participate in services tailored to his or her individual needs and designed to enhance his or her ability to receive the skills necessary to enter adulthood;

(D) Assist the juvenile in developing and maintaining healthy relationships with nurturing adults who can be a resource and positive guiding influences in his or her life after he or she leaves foster care; and

(E) Provide the juvenile with basic information and documentation regarding his or her biological family and personal history.

(b)(1) The department shall assist a juvenile in foster care or entering foster care with the development of a transitional life plan when the juvenile turns fourteen (14) years of age or within ninety (90) days of his or her fourteenth birthday, whichever occurs first.

(2) The plan shall include without limitation written information and confirmation concerning:

(A) A description of the programs and services that will help the juvenile prepare for transition from foster care to a successful adulthood, including without limitation the John H. Chafee Foster Care Program for Successful Transition to Adulthood;

(B) The juvenile's right to remain in extended foster care after reaching eighteen (18) years of age if the juvenile:

(i) Is completing secondary education or a program leading to an equivalent credential;

(ii) Is enrolled in an institution that provides postsecondary or vocational education;

(iii) Is participating in a program or activity designed to promote or remove barriers to employment;

(iv) Is employed for at least eighty (80) hours per month;

(v) Has a viable plan to meet the requirements of subdivisions (b)(2)(B)(i)-(iv) of this section; or

(vi) Is incapable of doing one (1) or more of the activities listed in subdivisions (b)(2)(B)(i)-(v) of this section due to a medical condition, which incapability is supported by regularly updated information in the case plan of the juvenile; and

(C) The juvenile's case, including his or her biological family, foster care placement history, tribal information, if applicable, and the whereabouts of siblings, if any, unless a court determines that release of information pertaining to a sibling would jeopardize the safety or welfare of the sibling.

(c) The department shall assist the juvenile with:

(1) Completing applications for:

(A) ARKids First, Medicaid, or assistance in obtaining other health insurance;

(B) Referrals to transitional housing, if available, or assistance in securing other housing; and

(C) Assistance in obtaining employment or other financial support;

(2) Applying for admission to a college or university, to a vocational training program, or to another educational institution and in obtaining financial aid, when appropriate; and

(3) Developing and maintaining relationships with individuals who are important to the juvenile and who may serve as resources that are based on the best interest of the juvenile.

(d) A juvenile and his or her attorney shall fully participate in the development of his or her transitional plan, to the extent that the juvenile is able to participate medically and developmentally.

(e)(1) If a juvenile does not have the capacity to successfully transition into adulthood without the assistance of the Office of Public Guardian for Adults, the Division of Children and Family Services shall make a referral to the office no later than six (6) months before the juvenile reaches eighteen (18) years of age or upon entering foster care, whichever occurs later.

(2) A representative from the office or a designee shall attend and participate in the transitional youth staffing, and information shall be provided to all of the parties about what services are available and how to access services for the juvenile after reaching the age of majority.

(f) Before closing a case, the department shall provide a juvenile in foster care who reaches eighteen (18) years of age or before leaving foster care, whichever is later, his or her:

(1) Social Security card;

(2) Certified birth certificate or verification of birth record, if available or if it should have been available to the department;

(3) Family photos in the possession of the department;

(4)(A) All of the juvenile's health records for the time the juvenile was in foster care and other medical records that were available or should have been available to the department.

(B) A juvenile who reaches eighteen (18) years of age and remains in foster care shall not be prevented from requesting that his or her health records remain private;

(5) All of the juvenile's educational records for the time the juvenile was in foster care and any other educational records that were available or should have been available to the department; and

(6) Driver's license or a state-issued official identification card.

(g) Within thirty (30) days after the juvenile leaves foster care, the department shall provide the juvenile a full accounting of all funds held by the department to which he or she is entitled, information on how to access the funds, and when the funds will be available.

(h) The department shall not request a circuit court to close a family-in-need-of-services case or dependency-neglect case involving a juvenile in foster care until the department complies with this section.

(i) The department shall provide notice to the juvenile and his or her attorney before a hearing in which the department or another party requests a court to close the case is held.

(j) A circuit court shall continue jurisdiction over a juvenile who has reached eighteen (18) years of age to ensure compliance with § 9-28-114.

(k) This section does not limit the discretion of a circuit court to continue jurisdiction for other reasons as provided for by law.

History. Acts 2009, No. 391, § 1; 2011, No. 591, § 8; 2013, No. 1055, § 15; 2015, No. 1033 § 1; 2015, No. 1038, § 3; 2017, No. 251, § 2; 2019, No. 663, § 1; 2021, No. 316, § 2; 2021, No. 791, § 4.

A.C.R.C. Notes. Subdivision (b)(2)(A) of this section is set out above as amended by Acts 2021, No. 316, § 2 except that the phrase “and other transitional services” following “Adulthood” was deleted pursuant to Acts 2021, No. 791, § 4. Subdivision (b)(2)(B) is set out above as amended by Acts 2021, No. 791, § 4. Acts 2021, No. 316, § 2, amended subdivision (b)(2)(B) to read:

“(B) The right of the juvenile to remain in extended foster care after reaching eighteen (18) years of age if the juvenile is:

“(i) Completing secondary education or a program leading to an equivalent credential;

“(ii) Enrolled in an institution providing postsecondary or vocational education;

“(iii) Participating in a program or activity designed to promote or remove barriers to employment;

“(iv) Employed for at least eighty (80) hours per month; or

“(v) Incapable of performing the activities described in subdivisions (b)(2)(B)(i)-(iv) of this section due to a documented medical condition; and”

Amendments. The 2021 amendment by No. 316 substituted “A description of the programs and services that will help the juvenile prepare for transition from foster care to a successful adulthood” for “The juvenile’s right to stay in foster care after reaching eighteen (18) years of age for education, treatment, or work and specific programs and services” in (b)(2)(A); and inserted (b)(2)(B) and redesignated former (b)(2)(B) as (b)(2)(C).

The 2021 amendment by No. 791 deleted “and other transitional services” following “Adulthood” in (b)(2)(A); inserted (b)(2)(B); and redesignated former (b)(2)(B) as (b)(2)(C).

9-27-371. Punitive isolation or solitary confinement of juveniles — Definitions.

(a) As used in this section:

(1) “Punitive isolation” means the placement of a juvenile in a location that is separate from the general population as a punishment; and

(2) “Solitary confinement” means the isolation of a juvenile in a cell separate from the general population as a punishment.

(b) Subject to subsection (c) of this section, a juvenile who has been placed or detained in a juvenile detention facility shall not be placed in punitive isolation or solitary confinement as a disciplinary measure for more than twenty-four (24) hours unless the:

(1) Placement of the juvenile in punitive isolation or solitary confinement is due to:

(A) A physical or sexual assault committed by the juvenile while in the juvenile detention facility;

(B) Conduct of the juvenile that poses an imminent threat of harm to the safety or well-being of the juvenile, the staff, or other juveniles in the juvenile detention facility; or

(C) The juvenile's escaping or attempting to escape from the juvenile detention facility; and

(2)(A) Director of the juvenile detention facility provides written authorization to place the juvenile in punitive isolation or solitary confinement for more than twenty-four (24) hours.

(B) The director of the juvenile detention facility shall provide the written authorization described in subdivision (b)(2)(A) of this section for every twenty-four-hour period during which the juvenile remains in punitive isolation or solitary confinement after the initial twenty-four (24) hours.

(c)(1) A juvenile who has been placed or detained in a juvenile detention facility shall not be placed in solitary confinement if the juvenile:

(A) Is pregnant;

(B) Has delivered a child prior to or within thirty (30) days of being detained;

(C) Is breastfeeding;

(D) Is suffering from postpartum depression or another medically verifiable postpartum condition; or

(E) Is caring for a child in a juvenile detention facility.

(2) This subsection does not apply if:

(A) The juvenile has engaged in an act of violence while incarcerated or detained that either resulted in or was likely to result in serious physical injury or death to another person; or

(B) There is reasonable cause to believe that the use of solitary confinement is necessary to reduce a substantial risk of imminent serious physical injury or death to another person, as evidenced by the juvenile's recent conduct while incarcerated or detained.

History. Acts 2019, No. 971, § 1; 2021, No. 422, § 1. added "Subject to subsection (c) of this section" in the introductory language of

Amendments. The 2021 amendment (b); and added (c).

CHAPTER 28

PLACEMENT AND DETENTION PROGRAMS

SUBCHAPTER.

1. CHILDREN AND FAMILY SERVICES.
2. YOUTH SERVICES.
4. CHILD WELFARE AGENCY LICENSING ACT.

SUBCHAPTER 1 — CHILDREN AND FAMILY SERVICES

SECTION.

9-28-114. Foster youth transition.

9-28-105. Preference to relative caregivers for a child in foster care.

CASE NOTES

Placement With Relatives.

Terminating a mother’s parental rights was in the child’s best interest where the child’s relationship with the purported grandparents had no bearing because they were not the child’s relatives as defined by this section and § 9-28-108(a).

Specifically, they were the parents of the putative father whose parental rights were never established and had been terminated. M.S. v. Ark. Dep’t of Human Servs., 2021 Ark. App. 77, 617 S.W.3d 731 (2021).

9-28-108. Placement of juveniles — Definitions.

CASE NOTES

Placement with Relatives.

Terminating a mother’s parental rights was in the child’s best interest where the child’s relationship with the purported grandparents had no bearing because they were not the child’s relatives as defined by § 9-28-105 and subsection (a) of

this section. Specifically, they were the parents of the putative father whose parental rights were never established and had been terminated. M.S. v. Ark. Dep’t of Human Servs., 2021 Ark. App. 77, 617 S.W.3d 731 (2021).

9-28-114. Foster youth transition.

(a) The General Assembly finds that:

(1) Each juvenile in foster care should have a family for a lifetime, but too many juveniles in foster care reach the age of majority without being successfully reunited with their biological families and without the security of permanent homes;

(2) A child in foster care who is approaching the age of majority shall be provided the opportunity to be actively engaged in the planning of his or her future; and

(3) The Department of Human Services shall:

(A) Include the child in the process of developing a plan to transition the child into adulthood;

(B) Empower the child with information about all of the options and services available;

(C) Provide the child with the opportunity to participate in services tailored to his or her individual needs and designed to enhance his or her ability to receive the skills necessary to enter adulthood;

(D) Assist the child in developing and maintaining healthy relationships with nurturing adults who can be resources and positive guiding influences in his or her life after he or she leaves foster care;

(E) Provide the child with basic information and documentation regarding his or her biological family and personal history;

(F) Offer an extended foster care program that provides:

(i) Case management services and supports; and

(ii) Financial assistance with room and board costs for a juvenile who:

(a) Was adjudicated dependent or dependent-neglected;
(b) Was in foster care at eighteen (18) years of age but is not yet twenty-one (21) years of age or such other age as may be required under federal law;

(c) Wishes to participate in extended foster care to benefit from the program; and

(d) Either:

(1) Is completing secondary education or a program leading to an equivalent credential;

(2) Is enrolled in an institution that provides postsecondary or vocational education;

(3) Is participating in a program or activity designed to promote or remove barriers to employment;

(4) Is employed for at least eighty (80) hours per month;

(5) Has a viable plan to meet the requirements of subdivisions (a)(3)(F)(ii)(d)(1)-(4) of this section; or

(6) Is incapable of doing any of the activities listed in subdivisions (a)(3)(F)(ii)(d)(1)-(5) of this section due to a medical condition, which incapability is supported by regularly updated information in the case plan of the juvenile;

(G)(i) Allow a juvenile described in subdivisions (a)(3)(F)(ii)(a)-(d) of this section who left foster care to reenter the extended foster care program if the juvenile submits a request in writing or in person to the department for his or her return to foster care.

(ii) The department may discharge a juvenile from the extended foster care program if the juvenile:

(a) Is over eighteen (18) years of age;

(b) Reenters extended foster care after having his or her request to reenter foster care approved; and

(c) Fails to engage in or have a viable plan to meet the requirements listed in subdivision (a)(3)(F)(ii)(d) of this section or have a viable plan to meet the requirements listed in subdivision (a)(3)(F)(ii)(d) of this section for more than sixty (60) days; and

(H) Recognize that participation in extended foster care does not impede or otherwise alter any right afforded to the youth by virtue of his or her age of majority including without limitation the right to consent to medical treatment or enter into contracts.

(b)(1) The department shall assist a juvenile in foster care or entering foster care with the development of a transitional life plan when the juvenile turns fourteen (14) years of age or within ninety (90) days of his or her fourteenth birthday, whichever occurs first.

(2) The plan shall include without limitation written information and confirmation concerning:

(A) The juvenile's right to stay in extended foster care after reaching eighteen (18) years of age in order to participate in specific transitional programs and services, including without limitation the John H. Chafee Foster Care Program for Successful Transition to Adulthood; and

(B) The juvenile's case, including his or her biological family, foster care placement history, tribal information, if applicable, and the whereabouts of siblings, if any, unless a court determines that release of information pertaining to a sibling would jeopardize the safety or welfare of the sibling.

(c) The department shall assist the juvenile with:

(1) Completing applications for:

(A) ARKids First, Medicaid, or assistance in obtaining other health insurance;

(B) Referrals to transitional housing, if available, or assistance in securing other housing; and

(C) Assistance in obtaining employment or other financial support;

(2) Applying for admission to a college or university, to a vocational training program, or to another educational institution and in obtaining financial aid, when appropriate; and

(3) Developing and maintaining relationships with individuals who are important to the juvenile and who may serve as resources based on the best interest of the juvenile.

(d) A juvenile and his or her attorney shall fully participate in the development of his or her transitional plan, to the extent that the juvenile is able to participate medically and developmentally.

(e)(1) If a juvenile does not have the capacity to successfully transition into adulthood without the assistance of the Office of Public Guardian for Adults, the Division of Children and Family Services shall make a referral to the office no later than six (6) months before the juvenile reaches eighteen (18) years of age or upon entering foster care, whichever occurs later.

(2) A representative from the office shall attend and participate in the transitional youth staffing, and information shall be provided to all of the parties about what services are available and how to access services for the youth after reaching the age of majority.

(f) Before closing a case, the department shall provide a juvenile in foster care who reaches eighteen (18) years of age or before leaving foster care, whichever is later, his or her:

(1) Social Security card;

(2) Certified birth certificate or verification of birth record, if available or if it should have been available to the department;

(3) Family photos in the possession of the department;

(4)(A) All of the juvenile's health records for the time the juvenile was in foster care and any other medical records that were available or should have been available to the department.

(B) A juvenile who reaches eighteen (18) years of age and remains in foster care shall not be prevented from requesting that his or her health records remain private;

(5) All of the juvenile's educational records for the time the juvenile was in foster care and any other educational records that were available or should have been available to the department; and

(6) Driver's license or a state-issued official identification card.

(g) Within thirty (30) days after the juvenile leaves foster care, the department shall provide the juvenile a full accounting of all funds held by the department to which he or she is entitled, information on how to access the funds, and when the funds will be available.

(h) The department shall not request a circuit court to close a family-in-need-of-services case or dependency-neglect case involving a juvenile in foster care until the department complies with this section.

(i) The department shall provide notice to the juvenile and his or her attorney before a hearing in which the department or another party requests a court to close the case is held.

(j) Nothing in this subchapter prohibits a child in the custody of the department from sharing at his or her discretion information concerning his or her experience with the department after consultation with his or her assigned attorney ad litem.

History. Acts 2011, No. 591, § 1; 2015, No. 1033, § 2; 2015, No. 1038, § 8; 2019, No. 663, § 2; 2021, No. 316, §§ 3, 4; 2021, No. 791, §§ 5, 6.

Protective Services Unit of the Department of Human Services"; substituted "the office" for "the unit" in (e)(1) and (e)(2); and added (j).

Amendments. The 2021 amendment by No. 316, in (e)(1), substituted "Office of Public Guardian for Adults" for "Adult

The 2021 amendment by No. 791 added (a)(3)(F) and (a)(3)(G); and rewrote (b)(2)(A).

SUBCHAPTER 2 — YOUTH SERVICES

SECTION.

9-28-217. Juvenile records confidentiality.

9-28-217. Juvenile records confidentiality.

(a) Except as provided in subsection (c) of this section, reports, correspondence, memoranda, case histories, or other material that personally identifies a juvenile, including protected health information, compiled or received by a juvenile detention facility, a community-based provider for the Division of Youth Services, or the Division of Youth Services shall be confidential and shall not be released or otherwise made available except to the following persons or entities and to the extent permitted by federal law:

- (1) The juvenile;
- (2) The juvenile's parent, guardian, or custodian;
- (3) The juvenile division of circuit court and court staff;
- (4) The ombudsman of youth committed to the Division of Youth Services;
- (5) The attorney for the juvenile;
- (6) The attorney ad litem for the juvenile;
- (7) A grand jury or a court upon a finding that information in the juvenile's record is necessary for the determination of an issue before the court or the grand jury;
- (8)(A) Individual federal and state representatives and senators and their staff members in their official capacity.

(B) However, no disclosure shall be made to any committee or legislative body of any information that identifies any recipient of services by name or address unless the juvenile, the juvenile's attorney, and the juvenile's parent, guardian, or custodian agree in writing to waive confidentiality and permit disclosure to the committee or legislative body;

(9) Law enforcement or the prosecuting attorney;

(10) Service providers, including healthcare providers, to assist in the care, evaluation, examination, or treatment of the juvenile;

(11) A governmental agency for an audit or similar activity conducted in connection with the administration of any plan or program if the governmental agency is authorized by law to conduct the audit or activity;

(12) A court-appointed special advocate upon presentation of an order of appointment;

(13) A federal program or federally assisted program that provides assistance, in cash or in kind, or services directly to individuals on the basis of need;

(14) A federal, state, or local government entity or any agent of the entity having a need for the information in order to carry out its responsibilities under law to serve or protect a juvenile delinquent or a juvenile who is a member of a family in need of services;

(15) Any licensing or registering authority may access to the extent necessary to carry out its official responsibilities;

(16) A multidisciplinary team coordinating a child maltreatment investigation under the Child Maltreatment Act, § 12-18-101 et seq., pertaining to the juvenile;

(17) The general public about any juvenile fatality if the death occurred when the Division of Youth Services, a detention center, or a community-based provider had responsibility for placement and care of the juvenile;

(18)(A) A person, agency, or organization engaged in a bona fide research or evaluation project that is determined by the Division of Youth Services to have value for the evaluation or development of policies to advance juvenile justice.

(B) Any confidential information provided by the Department of Human Services for a research or evaluation project in subdivision (a)(18)(A) of this section shall not be redisclosed or published; and

(19)(A) The Department of Corrections for the purpose of creating a risk assessment, classification plan, or supervision plan for each juvenile who:

(i) Has an extended juvenile jurisdiction designation; and

(ii) Comes under the supervision or enters into the custody of the Department of Corrections as an adult from the Division of Youth Services.

(B)(i) The Department of Corrections shall promulgate rules for the implementation of this subdivision (a)(19).

(ii) The rules of the Department of Corrections shall prescribe the procedure for requesting confidential juvenile records under this section and the manner in which the records shall be used.

(iii) The Department of Corrections shall submit the rules to the following committees for review:

- (a) Senate Interim Committee on Children and Youth;
- (b) House Committee on Aging, Children and Youth, Legislative and Military Affairs; and
- (c) Administrative Rules Subcommittee of the Legislative Council.

(b)(1) Any person or agency to whom disclosure is made shall not disclose to any other person not identified in subsection (a) of this section a report or other information obtained pursuant to this section.

(2) Nothing in this subsection shall be construed to prevent subsequent disclosure by the parent, guardian, or custodian, or the juvenile or the juvenile's attorney.

(3) Any person disclosing information in violation of this subsection shall be guilty of a Class C misdemeanor.

(c) No information pertaining to a juvenile shall be released by a juvenile detention facility, a community-based provider for the Division of Youth Services, or the Division of Youth Services after the juvenile reaches eighteen (18) years of age unless:

(1) The juvenile remains in the custody of the Division of Youth Services;

(2) The juvenile consents; or

(3) An order requiring release of the information is entered by a court or a grand jury.

History. Acts 2007, No. 742, § 1; 2009, No. 758, § 15; 2016 (3rd Ex. Sess.), No. 16, § 1; 2016 (3rd Ex. Sess.), No. 17, § 1; 2021, No. 187, § 1.

Amendments. The 2021 amendment added (a)(19).

SUBCHAPTER 4 — CHILD WELFARE AGENCY LICENSING ACT

SECTION.

9-28-402. Definitions.

9-28-405. Child Welfare Agency Review Board — Duties.

SECTION.

9-28-407. Licenses required and issued.

9-28-409. Criminal record and child maltreatment checks.

9-28-402. Definitions.

As used in this subchapter:

(1) "Adoptive home" means a household of one (1) or more persons that has been approved by a licensed child placement agency to accept a child for adoption;

(2) "Adverse action" means any petition by the Department of Human Services before the Child Welfare Agency Review Board to take any of the following actions against a licensee or applicant for a license:

(A) Revocation of license;

(B) Suspension of license;

(C) Conversion of license from regular or provisional status to probationary status;

(D) Imposition of a civil penalty;

(E) Denial of application; or

(F) Reduction of licensed capacity;

(3) "Alternative compliance" means approval from the Child Welfare Agency Review Board to allow a licensee to deviate from the letter of a rule, provided that the licensee has demonstrated how an alternate plan of compliance will meet or exceed the intent of the rule;

(4) "Board" means the Child Welfare Agency Review Board;

(5) "Boarding school" means an institution that is operated solely for educational purposes and that meets each of the following criteria:

(A) The institution is in operation for a period of time not to exceed the minimum number of weeks of classroom instruction required of schools accredited by the Division of Elementary and Secondary Education;

(B) The children in residence must customarily return to their family homes or legal guardians during school breaks and must not be in residence year round, except that this provision does not apply to students from foreign countries; and

(C) The parents of children placed in the institution retain custody and planning and financial responsibility for the children;

(6) "Child" means a person who is:

(A) From birth to eighteen (18) years of age; or

(B) Adjudicated dependent-neglected, dependent, or a member of a family in need of services before eighteen (18) years of age and for whom the juvenile division of a circuit court retains jurisdiction under the Arkansas Juvenile Code of 1989, § 9-27-301 et seq.;

(7) "Child placement agency" means a child welfare agency, not including any person licensed to practice medicine or law in the State of Arkansas, that engages in any of the following activities:

(A) Places a child in a foster home, adoptive home, or any type of facility licensed or exempted by this subchapter;

(B) Plans for the placement of a child into a foster home, adoptive home, or any type of facility licensed or exempted by this subchapter;

(C) Assists the placement of a child in a foster home, adoptive home, or any type of facility licensed or exempted by this subchapter; or

(D) Places, plans for the placement, or assists in the placement of a child victim of human trafficking in a home or any type of shelter or facility;

(8) "Child welfare agency" means any person, corporation, partnership, voluntary association, or other entity or identifiable group of entities having a coordinated ownership of controlling interest, whether established for profit or otherwise, that engages in any of the following activities:

(A) Receives a total number of six (6) or more unrelated minors for care on a twenty-four-hour basis for the purpose of ensuring the

minors receive care, training, education, custody, or supervision, whether or not there are six (6) or more children cared for at any single physical location;

(B) Places any unrelated minor for care on a twenty-four-hour basis with persons other than themselves;

(C) Plans for or assists in the placements described in subdivision (8)(B) of this section; or

(D) Receives, places, plans, or assists in the placement of a child victim of human trafficking in a home or any type of shelter or facility;

(9)(A) "Class A violation" means a violation of an essential standard, including any of those governing fire, health, safety, nutrition, staff-to-child ratio, and space.

(B) Operation of an unlicensed child welfare agency shall also be a Class A violation unless specifically exempted as provided in this subchapter;

(10) "Class B violation" means any other violation of a standard that is not a Class A violation;

(11) "Emergency child care" means any residential childcare facility that provides care to children on a time-limited basis, not to exceed ninety (90) days;

(12) "Exempt child welfare agency" means any person, corporation, partnership, voluntary association or other entity, whether established for profit or otherwise, that otherwise fits the definition of a child welfare agency but that is specifically exempt from the requirement of obtaining a license under this subchapter. Those agencies specifically exempt from the license requirement are:

(A) A facility or program owned or operated by an agency of the United States Government;

(B)(i) Any agency of the State of Arkansas that is statutorily authorized to administer or supervise child welfare activities.

(ii) In order to maintain exempt status, the state child welfare agency shall state every two (2) years in written form signed by the persons in charge that their agency is in substantial compliance with published state agency child welfare standards.

(iii) Visits to review and advise exempt state agencies shall be made as deemed necessary by the Child Welfare Agency Review Board to verify and maintain substantial compliance with the standards;

(C) A facility or program owned or operated by or under contract with the Division of Correction;

(D) A hospital providing acute care licensed pursuant to § 20-9-201 et seq.;

(E) Any facility governed by the Department of Human Services State Institutional System Board or its successor;

(F) Human development centers regulated by the Board of Developmental Disabilities Services pursuant to the Location Act for Community Homes for Individuals with Intellectual and Developmental Disabilities, § 20-48-601 et seq.;

(G) Any facility licensed as a family home pursuant to the Location Act for Community Homes for Individuals with Intellectual and Developmental Disabilities, § 20-48-601 et seq.;

(H) Any boarding school as defined in this section;

(I) Any temporary camp as defined in this section;

(J) Any state-operated facility to house juvenile delinquents or any serious offender program facility operated by a state designee to house juvenile delinquents. Those facilities shall be subject to program requirements modeled on nationally recognized correctional facility standards that shall be developed, administered, and monitored by the Division of Youth Services;

(K) Any child welfare agency operated solely by a religious organization that elects to be exempt from licensing and that complies within the conditions of the exemption for church-operated agencies as set forth in this subchapter;

(L) The Division of Developmental Disabilities Services; and

(M) Any intellectual or other developmental disabilities services waiver provider licensed under § 20-48-208 or the Location Act for Community Homes for Individuals with Intellectual and Developmental Disabilities, § 20-48-601 et seq.;

(13)(A) "Fictive kin" means a person selected by the Division of Children and Family Services who:

(i) Is not related to a child by blood or marriage; and

(ii) Has a strong, positive, and emotional tie or role in the:

(a) Child's life; or

(b) Child's parent's life if the child is an infant.

(B) The Director of the Division of Children and Family Services or his or her designee shall approve a fictive kin for an infant;

(14)(A) "Foster home" means the home of an individual or family:

(i) That is licensed or approved as a foster home under the terms of this subchapter; and

(ii) Where a child in foster care is placed into the care of an individual who is licensed or approved to be a foster parent under this subchapter.

(B) "Foster home" does not include an adoptive home or a home suspended or closed by a child placement agency;

(15) "Independent living home" means any child welfare agency that provides specialized services in adult living preparation in an experiential setting for persons sixteen (16) years of age or older;

(16) "Minimum standards" means those rules as established by the Child Welfare Agency Review Board that set forth the minimum acceptable level of practice for the care of children by a child welfare agency;

(17) "Provisional foster home" means a foster home opened for no more than six (6) months by the Division of Children and Family Services for a relative or fictive kin of a child in the custody of the Division of Children and Family Services after it:

(A) Determines that placement with the proposed fictive kin or relative is in the best interest of the child;

(B) Conducts a health and safety check, including a Child Maltreatment Central Registry check and either a criminal background check or a check with local law enforcement, of the relative's home or home of the fictive kin; and

(C) Performs a visual inspection of the home of the relative or fictive kin to verify that the relative or fictive kin and the home meet the standards for opening a regular foster home;

(18) "Psychiatric residential treatment facility" means a residential childcare facility in a nonhospital setting that provides a structured, systematic, therapeutic program of treatment under the supervision of a psychiatrist, for children who are emotionally disturbed and in need of daily nursing services, psychiatrist's supervision, and residential care but who are not in an acute phase of illness requiring the services of an inpatient psychiatric hospital;

(19) "Qualified nonprofit organization" means a charitable or religious institution that is exempt from federal income taxation under Section 501(a), Internal Revenue Code of 1986, as an organization described by Section 501(c)(3), that assists a parent, guardian, or legal custodian of a child with the process of entering into an authorization agreement in the form of a power of attorney for voluntary respite care, including without limitation identifying an appropriate voluntary respite care placement for each child subject to the agreement and assisting a parent, guardian, or legal custodian in locating and contacting a voluntary respite care provider;

(20) "Relative" means a person within the fifth degree of kinship by virtue of blood or adoption;

(21) "Religious organization" means a church, synagogue, or mosque or association of same whose purpose is to support and serve the propagation of truly held religious beliefs;

(22) "Residential childcare facility" means any child welfare agency that provides care, training, education, custody, or supervision on a twenty-four-hour basis for six (6) or more unrelated children, excluding foster homes that have six (6) or more children who are all related to each other but who are not related to the foster parents;

(23) "Special consideration" means approval from the Child Welfare Agency Review Board to allow a licensee to deviate from the letter of a rule if the licensee has demonstrated that the deviation is in the best interest of the children and does not pose a risk to persons served by the licensee;

(24)(A) "Substantial compliance" means compliance with all essential standards necessary to protect the health, safety, and welfare of the children in the care of the child welfare agency.

(B) Essential standards include, but are not limited to, those relating to issues involving fire, health, safety, nutrition, discipline, staff-to-child ratio, and space;

(25) "Temporary camp" means any facility or program providing twenty-four-hour care or supervision to children that meets the following criteria:

(A) The facility or program is operated for recreational, educational, or religious purposes only;

(B) No child attends the program more than forty (40) days in a calendar year; and

(C) The parents of children placed in the program retain custody and planning and financial responsibility for the children during placement;

(26) "Unrelated minor" means a child who is not related by blood, marriage, or adoption to the owner or operator of the child welfare agency and who is not a ward of the owner or operator of the child welfare agency pursuant to a guardianship order issued by a court of competent jurisdiction;

(27)(A) "Voluntary respite care" means a temporary placement arrangement facilitated by a qualified nonprofit organization that engages in certain placement activities similar to a child placement agency or child welfare agency.

(B) "Voluntary respite care" does not include placements provided by a person or an entity that otherwise qualifies as an exempt child welfare agency as that term is defined in subdivision (12) of this section;

(28) "Voluntary respite care provider" means a person, approved by a qualified nonprofit organization, who enters into a written agreement with a parent, guardian, or legal custodian of a minor whereby:

(A) The parent, guardian, or legal custodian voluntarily decides to place the minor into voluntary respite care and actively participates in the process of placing the minor into voluntary respite care;

(B) The placement of a minor into voluntary respite care is made for the purpose of assisting a family in crisis by providing a temporary arrangement for the twenty-four-hour care of the minor;

(C) The parent, guardian, or legal custodian of the minor retains the authority to terminate the voluntary respite care at any time and may immediately regain physical custody of the minor; and

(D) The voluntary respite care provider does not engage in an activity described in subdivision (8)(A) or subdivision (8)(D) of this section;

(29)(A) "Childcare institution" means a public or private placement or care setting for children.

(B) Except as otherwise provided by subdivision (29)(C) of this section, "childcare institution" includes without limitation a group home, residential treatment center, shelter, or other congregate care setting, that is licensed or approved by the following:

(i) If the public or private placement or care setting is located in this state, by the Child Welfare Agency Review Board;

(ii) If the public or private placement or care setting is located out-of-state, by the authority in the state of origin of the public or private placement or care setting that is responsible for licensing or approving a childcare institution;

(iii) If the public or private placement or care setting is on or near an Indian reservation, by the tribal authority of the Indian reservation; or

(iv) If the public or private placement or care setting is located in the service area of a Tribal Title IV-E agency, by the Tribal Title IV-E agency.

(C) “Childcare institution” does not include a foster home, detention facility, forestry camp, training school, or other facility operated primarily for the detention of children who are determined by a court to be delinquent;

(30) “Public childcare institution” means a childcare institution that accommodates no more than twenty-five (25) children at a time and is operated by a state or local government entity; and

(31) “Operation” means a child welfare agency or exempt child welfare agency that is open and actively engaged in at least one (1) of the activities described in subdivisions (8)(A)-(D) of this section.

History. Acts 1997, No. 1041, § 2; 2005, No. 874, § 2; 2005, No. 1766, § 1; 2005, No. 2234, § 1; 2007, No. 634, § 1; 2009, No. 723, § 1; 2011, No. 522, §§ 1-5; 2013, No. 478, § 4; 2013, No. 1275, § 1; 2015, No. 1138, §§ 1, 2; 2017, No. 319, § 1; 2017, No. 700, §§ 3, 4; 2019, No. 315, § 722; 2019, No. 381, §§ 1, 2; 2019, No. 663, § 3; 2019, No. 910, §§ 2203, 2204; 2019, No. 1035, §§ 4, 5; 2021, No. 269, § 1; 2021, No. 772, § 1.

Amendments. The 2021 amendment by No. 269 added (29) and (30).

The 2021 amendment by No. 772 added (31).

9-28-405. Child Welfare Agency Review Board — Duties.

(a)(1) The Child Welfare Agency Review Board shall promulgate and publish rules setting minimum standards governing the granting, revocation, refusal, conversion, and suspension of licenses for a child welfare agency and the operation of a child welfare agency.

(2) The board may consult with such other agencies, organizations, or individuals as it shall deem proper.

(3)(A) The board shall take any action necessary to prohibit any person, partnership, group, corporation, organization, or association not licensed or exempted from licensure pursuant to this subchapter from advertising, placing, planning for, or assisting in the placement of any unrelated minor for purposes of adoption or for care in a foster home.

(B) The prohibition against advertising shall not apply to persons who are seeking to add to their own family by adoption.

(b) The board may amend the rules promulgated pursuant to this section from time to time, in accordance with the rule promulgation procedures in the Arkansas Administrative Procedure Act, § 25-15-201 et seq.

(c)(1) The board shall have exclusive authority to promulgate rules that:

(A) Promote the health, safety, and welfare of children in the care of a child welfare agency;

(B) Promote safe and healthy physical facilities;

(C) Ensure adequate supervision of the children by capable, qualified, and healthy individuals;

(D) Ensure appropriate educational programs and activities for children in the care of a child welfare agency;

(E) Ensure adequate and healthy food service;

(F) Include procedures for the receipt, recordation, and disposition of complaints regarding allegations of violations of this subchapter, of the rules promulgated under this subchapter, or of child maltreatment laws;

(G) Include procedures for the assessment of child and family needs and for the delivery of services designed to enable each child to grow and develop in a permanent family setting;

(H) Ensure that criminal record checks and central registry checks are completed on owners, operators, and employees of a child welfare agency as set forth in this subchapter;

(I) Require the compilation of reports and making those reports available to the Division of Youth Services when the board determines it is necessary for compliance determination or data compilation;

(J) Ensure that a child placement agency:

(i) Treats clients seeking or receiving services in a professional manner, as defined by rules promulgated pursuant to this section; and

(ii) Provides clients seeking or receiving services from a child placement agency that provides adoption services with the phone number and address of the Child Welfare Agency Licensing Unit of the Department of Human Services where complaints can be lodged;

(K) Require that all child welfare agencies that provide adoption services fully apprise in writing all clients involved in the process of adopting a child of the agency's adoption program or services, including all possible costs associated with the adoption program; and

(L) Establish rules governing retention of licensing records maintained by the Department of Human Services.

(2) This subchapter shall not be construed to prevent a licensed child welfare agency from adopting and applying internal operating procedures that meet or exceed the minimum standards required by the board.

(d)(1) Provided that the health, safety, and welfare of children in the care of a child welfare agency are not endangered, nothing in this subchapter shall permit the board to promulgate or enforce any rule that has the effect of:

(A) Interfering with the religious teaching or instruction offered by a child welfare agency;

(B) Infringing upon the religious beliefs of the holder or holders of a child welfare agency license;

(C) Infringing upon the right of an agency operated by a religious organization to consider creed in any decision or action relating to admitting or declining to admit a child or family for services; or

(D) Infringing upon the parent's right to consent to a child's participating in prayer or other religious practices while in the care of the child welfare agency.

(E) [Repealed.]

(2)(A)(i) A child welfare agency that articulates a sincerely held religious belief that is violated by a specific rule promulgated by the board shall notify the department in writing of the belief and the specific rule that violates the belief.

(ii) The rule shall be presumptively invalid as applied to that child welfare agency.

(B)(i) The department may then file a petition before the board seeking to enforce the rule.

(ii) The department shall bear the burden of showing that the health, safety, or welfare of children would be endangered by the exemption, and if the board so finds by a preponderance of the evidence, the board shall render a finding of fact so concluding.

(e) The board shall issue all licenses to child welfare agencies upon majority vote of board members present during each properly called board meeting at which a quorum is present when the meeting is called to order.

(f)(1)(A) The board shall have the power to deny an application to operate a child welfare agency or revoke or suspend a previously issued license to operate a child welfare agency.

(B) The board may deny, suspend, convert, or revoke a child welfare agency license or issue letters of reprimand or caution to a child welfare agency if the board finds by a preponderance of the evidence that the applicant or licensee:

(i) Fails to comply with the provisions of this subchapter or any published rule of the board relating to child welfare agencies;

(ii) Furnishes or makes any statement or report to the department that is false or misleading;

(iii) Refuses or fails to submit required reports or to make available to the department any records required by it in making an investigation of the agency for licensing purposes;

(iv) Refuses or fails to submit to an investigation or to reasonable inspection by the department;

(v) Retaliates against an employee who in good faith reports a suspected violation of the provisions of this subchapter or the rules promulgated under this subchapter;

(vi) Fails to engage in a course of professional conduct in dealing with clients being served by the child placement agency, as defined by rules promulgated pursuant to this section;

(vii) Demonstrates gross negligence in carrying out the duties at the child placement agency; or

(viii) Fails to provide clients involved in the process of adoption of a child with correct and sufficient information pertaining to the adoption process, services, and costs.

(2) Any denial of application or revocation or suspension of a license shall be effective when made.

(g) The board shall review the qualifications of persons required to have background checks under this subchapter.

(h)(1) The board or its designee may grant an agency's request for alternative compliance upon a finding that the child welfare agency does not meet the letter of a rule promulgated under this subchapter but that the child welfare agency meets or exceeds the intent of that rule through alternative means.

(2)(A) If the board or its designee grants a request for alternative compliance, the child welfare agency's practice as described in the request for alternative compliance shall be the compliance terms under which the child welfare agency will be held responsible.

(B) The board or its designee may grant an agency's request for special consideration upon a finding that the request is in the best interest of the child or children or does not pose a risk to the persons served by the agency.

(C) Violations of those terms shall constitute a rule violation.

(i)(1)(A) The board shall have the authority to impose a civil penalty upon any person violating any provisions of this subchapter and any person assisting any partnership, group, corporation, organization, or association in violating any provisions of this subchapter, except that the imposition of civil penalties shall not apply to agencies that have been granted a church-operated exemption pursuant to this subchapter.

(B)(i) The board may impose a civil penalty upon any person, partnership, group, corporation, organization, or association not licensed or exempt from licensure as a child welfare agency in the State of Arkansas pursuant to this subchapter that advertises, places, plans for, or assists in the placement of any unrelated minor for purposes of adoption or for care in a foster home.

(ii) The prohibition against advertising does not apply to persons who are seeking to add to their own family by adoption.

(2) The board shall have the discretion to impose a civil penalty pursuant to this section when the board determines by clear and convincing evidence that the person sought to be charged has violated this subchapter or the rules promulgated thereunder willfully, wantonly, or with conscious disregard for law or rule.

(3) The board may impose civil penalties as follows:

(A)(i) Class A violations as defined in this subchapter shall be subject to a civil penalty of five hundred dollars (\$500) for each violation, with each day of noncompliance constituting a separate violation.

(ii) In no event shall the board impose civil penalties of more than two thousand five hundred dollars (\$2,500) for Class A violations occurring in any one (1) calendar month; and

(B)(i) Class B violations as defined in this subchapter shall be subject to a civil penalty of one hundred dollars (\$100) for each violation with each day of noncompliance constituting a separate violation.

(ii) In no event shall the board impose civil penalties of more than five hundred dollars (\$500) for Class B violations occurring in any one (1) calendar month.

(4) If any person upon whom the board has levied a civil penalty fails to pay the civil penalty within sixty (60) days of the board's decision to impose the penalty, the amount of the fine shall be considered to be a debt owed the State of Arkansas and may be collected by civil action by the Attorney General.

(j)(1)(A) The board shall notify the applicant or licensee of the department's petition for adverse action in writing and set forth the facts forming the basis for the request for the adverse action.

(B) This notice shall offer the licensee the opportunity for a predeprivation adverse action hearing to determine if the adverse action should be taken against the licensee or applicant.

(2) This section does not prevent the department or the board from closing a child welfare agency on an emergency basis if emergency closure is immediately required to protect the health, safety, or welfare of children, in which case the licensee shall be entitled to a post-deprivation adverse action hearing.

(k)(1) Adverse action hearings shall comply with the Arkansas Administrative Procedure Act, § 25-15-201 et seq.

(2)(A) Within ten (10) business days after rendering a decision, the board shall forward to the applicant or licensee written findings of fact and conclusions of law articulating the board's decision.

(B) The board shall also issue an order that the applicant or licensee cease and desist from the unlawful operation of a child welfare agency if the adverse action taken was revocation or suspension of the license or denial of an application.

(l)(1) If, upon the filing of a petition for a judicial review, the reviewing court determines that there is a substantial possibility that the board's decision against the licensee or applicant may be reversed, the circuit court may enter a stay prohibiting enforcement of a decision of the board, provided that the court articulates the facts from the adverse action hearing record that constitute a substantial possibility of reversal.

(2)(A) Thereafter, the court shall complete its review of the record and announce its decision within one hundred twenty (120) days of the entry of the stay.

(B) If the court does not issue its findings within one hundred twenty (120) days of the issuance of the stay, the stay shall be considered vacated.

(m) All rules promulgated under this section and all public comment received in writing by the department in response shall be made available for review by the Senate Interim Committee on Children and

Youth and the Subcommittee on Children and Youth of the House Committee on Aging, Children and Youth, Legislative and Military Affairs, and by the Governor or his or her designee from among the Governor's staff.

(n)(1)(A) The validity or application of any rule promulgated by the board under authority of this subchapter shall be subject to remedies provided by law for obtaining declaratory judgments at the suit of any interested person instituted in the circuit court of any county in which the plaintiff resides or does business or in Pulaski County Circuit Court.

(B) However, the board must be named a party defendant and the board must be summoned as in an action by ordinary proceedings.

(2) If a juvenile is found to be maltreated due to the acts or omissions of a person other than the parent or guardian of the juvenile, the court may enter an order restraining or enjoining the person or facility employing that person from providing care, training, education, custody, or supervision of juveniles of whom the person or facility is not the parent or guardian.

(3)(A) If the person or facility other than the parent or guardian of the juvenile found to be maltreated was not subject to this subchapter, the court may order the person or facility to obtain a license from the board as a condition precedent to the person's or facility's providing care, training, education, custody, or supervision of any juveniles of whom the person or facility is not the parent or guardian.

(B) If the court so orders, this subchapter shall thereafter apply to the person or facility subject to the court order.

(o)(1) The department shall maintain a website accessible to the general public that contains information on child placement agencies.

(2) The website shall contain:

(A) The name, phone number, and address of all child placement agencies licensed by the board;

(B) Information on each child placement agency, specifically if the license is in good standing, if the license has ever been revoked or suspended, or if any letters of caution or reprimand have been issued by the board; and

(C) The name and contact information for a person in the unit who handles complaints about child placement agencies.

History. Acts 1997, No. 1041, § 5; 2005, No. 2225, § 1; 2005, No. 2234, § 2; 2009, No. 723, §§ 4-6; 2011, No. 522, §§ 9-14; 2013, No. 1275, § 2; 2019, No. 315, §§ 725-727; 2021, No. 673, § 1.

Amendments. The 2021 amendment repealed (d)(1)(E).

9-28-407. Licenses required and issued.

(a)(1) It shall be unlawful for any person, partnership, group, corporation, association, or other entity or identifiable group of entities having a coordinated ownership of controlling interest to operate or

assist in the operation of a child welfare agency that has not been licensed by the Child Welfare Agency Review Board from licensing under this subchapter.

(2) This license shall be required in addition to any other license required by law for all entities that fit the definition of a child welfare agency and are not specifically exempted, except that no nonpsychiatric residential treatment facility or agency licensed or exempted under this subchapter shall be deemed to fall within the meaning of § 20-10-101 et seq. for any purpose.

(3) Any child welfare agency capacity licensed by the board as of March 1, 2003, whether held by the original licensee or by a successor in interest to the original licensee, is exempted from:

(A) Obtaining any license or permit from the Office of Long-Term Care; and

(B)(i) Obtaining any permit from the Health Services Permit Agency or the Health Services Permit Commission to operate at the capacity licensed by the board as of March 1, 2003, except as required under subdivision (a)(3)(B)(ii) of this section.

(ii)(a) If a licensee is operating at less than or at the capacity licensed by the board as of March 1, 2021, the licensee shall obtain a permit from the Health Services Permit Agency or the Health Services Permit Commission for any increase in capacity.

(b) For the purposes of subdivision (a)(3)(B)(ii)(a) of this section, both in-state and out-of-state clients shall be counted in capacity for the purpose of obtaining a license from the board and a permit from the Health Services Permit Agency or the Health Services Permit Commission.

(4) Any new license or expansion of capacity by an existing licensee of the board shall require a license and permit from the Office of Long-Term Care or the Health Services Permit Agency.

(5)(A) A license issued by the board under this subchapter is effective unless revoked, suspended, or terminated by the board.

(B) In addition to any other basis provided by law or rule, the board shall terminate the license of a licensee that has not been in operation for a consecutive twelve-month period.

(C) The Department of Human Services may recommend to the board the revocation, suspension, or termination of a license for any basis provided by law or rule, including without limitation the failure to be in operation or in substantial compliance for a consecutive six-month period.

(b)(1) It shall be unlawful for any person to falsify an application for licensure, to knowingly circumvent the authority of this subchapter, to knowingly violate the orders issued by the board, or to advertise the provision of child care or child placement when not licensed under this subchapter to provide those services, unless determined by the board to be exempt from licensure under this subchapter.

(2) Any violation of this section shall constitute a Class D felony.

(c)(1) Any person, partnership, group, corporation, organization, association, or other entity or identifiable group of entities having a

coordinated ownership of controlling interest, desiring to operate a child welfare agency shall first make application for a license or a church-operated exemption for the facility to the board on the application forms furnished for this purpose by the board.

(2)(A) The Department of Human Services shall also furnish to the applicant upon request an application form.

(B) The child welfare agency shall submit a separate application for license for each separate physical location of a child welfare agency.

(d)(1) The department shall review, inspect, and investigate each applicant to operate a child welfare agency and shall present a recommendation to the board whether the board should issue a license and what the terms and conditions of the license should be.

(2) The department shall complete its recommendation within ninety (90) days after receiving a complete application from the applicant. A complete application shall consist of:

(A) A completed application form prepared and furnished by the board;

(B) A copy of the articles of incorporation, bylaws, and current board roster, if applicable, including names and addresses of the officers;

(C) A complete personnel list with verifications of qualifications and experience;

(D) Substantiation of the financial soundness of the child welfare agency's operation; and

(E) A written description of the child welfare agency's program of care, including intake policies, types of services offered, and a written plan for providing healthcare services to children in care.

(e)(1) The board shall issue a regular license that shall be effective until adverse action is taken on the license if the board finds that:

(A) The applicant for a child welfare agency license meets all licensing requirements; or

(B) The applicant for a child welfare agency license meets all essential standards, has a favorable compliance history, and has the ability and willingness to comply with all standards within a reasonable time.

(2)(A) The board may issue a provisional license that shall be effective for up to one (1) year if the board finds that the applicant meets all essential standards but the applicant requires more frequent monitoring because the applicant's ability or willingness to meet all standards within a reasonable time has not been favorably determined.

(B) The board shall at no time issue a regular or provisional license to any agency or facility that does not meet all essential standards.

(f)(1) A license to operate a child welfare agency shall apply only to the owner stated on the application.

(2) The license shall be transferable, along with all capacity and rights of licensure, from:

(A) One (1) location to another; and

(B) One (1) owner to another, if permitted under subdivision (f)(3) of this section.

(3) Whenever ownership of a controlling interest in the operation of a child welfare agency is sold, the following procedures shall be followed:

(A) The seller shall notify the department of the sale at least thirty (30) days before the completed sale;

(B) The seller shall remain responsible for the operation of the child welfare agency until the child welfare agency is closed or an amended license is issued to the buyer;

(C) The seller shall remain liable for all penalties assessed against the child welfare agency that are imposed for violations occurring before the transfer of a license to the buyer;

(D) The buyer shall provide all documentation required of a new applicant to the department;

(E) The buyer shall be subject to any corrective action notices to which the seller was subject; and

(F) The provisions of subsection (a) of this section, including those provisions regarding obtaining licenses or permits from the Office of Long-Term Care and regarding obtaining any permits from the Health Services Permit Agency or the Health Services Permit Commission, shall apply in their entirety to the new owner of the child welfare agency.

(g) If the board votes to issue a license to operate a child welfare agency, the license must be posted in a conspicuous place in the child welfare agency and must state at a minimum:

(1) The full legal name of the entity holding the license, including the business name, if different;

(2) The address of the child welfare agency;

(3) The effective date and expiration date of the license, if applicable;

(4) The type of child welfare agency the licensee is authorized to operate;

(5) The maximum number and ages of children that may receive services from the child welfare agency, if applicable;

(6) The status of the license, whether regular, provisional, or probationary; and

(7) Any special conditions or limitations of the license.

(h)(1) Reports, correspondence, memoranda, case histories, or other materials, including protected health information, compiled or received by a licensee or a state agency engaged in placing a child, including both foster care and protective services records, shall be confidential and shall not be released or otherwise made available except to the extent permitted by federal law and only:

(A) To the Director of the Child Welfare Agency Review Board as required by rule;

(B) For adoptive placements as provided by the Revised Uniform Adoption Act, § 9-9-201 et seq.;

(C) To multidisciplinary teams under § 12-18-106(a);

(D)(i) To the child's parent, guardian, or custodian.

(ii) However, the licensee or state agency may redact information from the record such as the name or address of foster parents or providers when it is in the best interest of the child.

(iii) The licensee or state agency may redact counseling records, psychological or psychiatric evaluations, examinations, or records, drug screens or drug evaluations, or similar information concerning a parent if the other parent is requesting a copy of a record;

(E) To the child;

(F)(i) To healthcare providers to assist in the care and treatment of the child at the discretion of the licensee or state agency and if deemed to be in the best interest of the child.

(ii) "Healthcare providers" includes doctors, nurses, emergency medical technicians, counselors, therapists, mental health professionals, and dentists;

(G) To school personnel and daycare centers caring for the child at the discretion of the licensee or state agency and if deemed to be in the best interest of the child;

(H)(i) To foster parents, the foster care record for children in foster care currently placed in their home.

(ii) However, information about the parents or guardians and any siblings not in the foster home shall not be redisclosed by a foster parent and shall only be used to assist the foster parent in the care of the child;

(I)(i) To the board.

(ii) However, at any board meeting no information that identifies by name or address any protective services recipient or foster care child shall be orally disclosed or released in written form to the general public;

(J) To the Division of Child Care and Early Childhood Education;

(K) For any audit or similar activity conducted in connection with the administration of any such plan or program by any governmental agency that is authorized by law to conduct the audit or activity;

(L) Upon presentation of an order of appointment, to a court-appointed special advocate;

(M) To the attorney ad litem for the child;

(N) For law enforcement or the prosecuting attorney upon request;

(O) To circuit courts, as provided for in the Arkansas Juvenile Code of 1989, § 9-27-301 et seq.;

(P) In a criminal or civil proceeding conducted in connection with the administration of any such plan or program;

(Q) For purposes directly connected with the administration of any of the state plans as outlined at 42 U.S.C. § 671(a)(8), as in effect January 1, 2001;

(R) For the administration of any other federal or federally assisted program that provides assistance, in cash or in kind, or services, directly to individuals on the basis of need;

(S)(i) To individual federal and state representatives and senators in their official capacity and their staff members with no redisclosure of information.

(ii) No disclosure shall be made to any committee or legislative body of any information that identifies by name or address any recipient of services;

(T) To a grand jury or court upon a finding that information in the record is necessary for the determination of an issue before the court or grand jury;

(U) To a person, provider, or government entity identified by the licensee or the state agency as having services needed by the child or his or her family;

(V) To volunteers authorized by the licensee or the state agency to provide support or services to the child or his or her family at the discretion of the licensee or the state agency and only to the extent information is needed to provide the support or services;

(W)(i) To a person, agency, or organization engaged in a bona fide research or evaluation project that is determined by the Division of Children and Family Services to have value for the evaluation or development of policies and programs within the Division of Children and Family Services.

(ii) Any confidential information provided by the department for a research or evaluation project under this subdivision (h)(1)(W) shall not be redisclosed or published;

(X) To a child fatality review panel as authorized by the department;

(Y) To the Child Welfare Ombudsman; or

(Z)(i) To a currently or previously licensed foster parent.

(ii) A foster parent shall only receive records:

(a) Concerning a child who was previously placed in the home of the foster parent and that are relevant to the period of time in which the child was placed in the home of the foster parent; and

(b) For which the foster parent has a legitimate need as determined by the licensee or department.

(2) Foster home and adoptive home records are confidential and shall not be released except:

(A) To the foster parents or adoptive parents;

(B) For purposes of review or audit, by the appropriate federal or state agency;

(C) Upon allegations of child maltreatment in the foster home or adoptive home, to the investigating agency;

(D) To the board;

(E) To the Division of Children and Family Services and the Division of Elementary and Secondary Education, including child welfare agency licensing specialists;

(F) To law enforcement or the prosecuting attorney upon request;

(G) To a grand jury or court upon a finding that information in the record is necessary for the determination of an issue before the court or grand jury;

(H)(i) To individual federal and state representatives and senators in their official capacity and their staff members with no redisclosure of information.

(ii) No disclosure shall be made to any committee or legislative body of any information that identifies by name or address any recipient of services; or

(I) To the attorney ad litem and court-appointed special advocate, the home studies on the potential adoptive families selected by the department to adopt the juvenile or as ordered by the court.

(3)(A) Any person or agency to whom disclosure is made shall not disclose to any other person reports or other information obtained pursuant to this subsection.

(B) Any person disclosing information in violation of this subsection shall be guilty of a Class C misdemeanor.

(C) Nothing in this subchapter shall be construed to prevent subsequent disclosure by the child or his or her parent or guardian.

(D) Any data, records, reports, or documents released under this section to a law enforcement agency, the prosecuting attorney, or a court by the department are confidential and shall be sealed and not redisclosed without a protective order to ensure that items of evidence for which there is a reasonable expectation of privacy are not distributed to persons or institutions without a legitimate interest in the evidence.

(i) Foster parents approved by a child placement agency licensed by the department shall not be liable for damages caused by their foster children, nor shall they be liable to the foster children nor to the parents or guardians of the foster children for injuries to the foster children caused by acts or omissions of the foster parents unless the acts or omissions constitute malicious, willful, wanton, or grossly negligent conduct.

History. Acts 1997, No. 1041, § 7; 1999, No. 1319, § 1; 2001, No. 1211, § 1; 2001, No. 1800, § 1; 2003, No. 1157, § 1; 2003, No. 1166, § 39; 2003, No. 1285, § 1; 2005, No. 888, § 2; 2005, No. 1766, § 2; 2005, No. 2234, §§ 3, 4; 2007, No. 634, § 2; 2009, No. 723, § 7; 2009, No. 758, § 16; 2011, No. 522, §§ 16-20; 2011, No. 591, § 10; 2013, No. 1107, § 10; 2013, No. 1275, §§ 4-7; 2015, No. 545, § 1; 2017, No. 329, § 1; 2017, No. 803, § 1; 2017, No.

913, § 27; 2019 No. 315, § 730; 2019, No. 910, §§ 2205, 2206; 2019, No. 945, § 4; 2021, No. 317, §§ 1, 2; 2021, No. 772, § 2.

Amendments. The 2021 amendment by No. 317 substituted “children in foster care” for “foster children” in (h)(1)(H)(i); and added (h)(1)(Z).

The 2021 amendment by No. 772 inserted “et seq.” in (a)(2); rewrote (a)(3) through (a)(5); and made stylistic changes.

9-28-409. Criminal record and child maltreatment checks.

(a)(1) Each of the following persons in a child welfare agency shall be checked with the Child Maltreatment Central Registry in his or her state of residence and any state of residence in which the person has lived for the past five (5) years and in the person’s state of employment, if different, for reports of child maltreatment in compliance with policy

and procedures promulgated by the Child Welfare Agency Review Board:

(A) An employee having direct and unsupervised contact with children;

(B) A volunteer having direct and unsupervised contact with children;

(C) A foster parent and all household members fourteen (14) years of age and older, excluding children in foster care;

(D) An adoptive parent and all household members fourteen (14) years of age and older, excluding children in foster care;

(E) An owner having direct and unsupervised contact with children;

(F) A member of the agency's board of directors having direct and unsupervised contact with children; and

(G) An adult working in a childcare institution.

(2) The Child Welfare Agency Review Board shall have the authority to deny a license or church-operated exemption to any applicant found to have any record of founded child maltreatment in the official record of the registry.

(3)(A) Any person required to be checked under this section who is found to have any record of child maltreatment in the official record of the registry shall be reviewed by the owner or operator of the facility in consultation with the Child Welfare Agency Review Board to determine appropriate corrective action measures that would indicate, but are not limited to, training, probationary employment, or nonselection for employment.

(B) The Child Welfare Agency Review Board shall also have the authority to deny a license or church-operated exemption to an applicant who continues to employ a person with any record of founded child maltreatment.

(4) All persons required to be checked with the registry under this subsection shall repeat the check at a minimum of every two (2) years, including adoptive parents who reside in Arkansas pending court issuance of a final decree of adoption, at which point repeat checks shall no longer be required.

(b)(1) Each of the following persons in a child welfare agency shall be checked with the Identification Bureau of the Division of Arkansas State Police to determine if the person has pleaded guilty or nolo contendere to or has been found guilty of the offenses listed in this subchapter in compliance with policy and procedures promulgated by the Child Welfare Agency Review Board:

(A) An employee having direct and unsupervised contact with children;

(B) A volunteer having direct and unsupervised contact with children;

(C) An owner having direct and unsupervised contact with children;

(D) A member of the agency's board of directors having direct and unsupervised contact with children;

(E) Foster parents, house parents, and each member of the household eighteen and one-half (18½) years of age and older, excluding children in foster care;

(F)(i) Adoptive parents and each member of the household eighteen and one-half (18½) years of age and older, excluding children in foster care.

(ii) Adoptive parents and each member of the household eighteen and one-half (18½) years of age and older, excluding children in foster care, who are not residents of Arkansas shall provide state-of-residence criminal records checks, if available; and

(G) An adult working in a childcare institution.

(2) A child in the custody of the Department of Human Services shall not be placed in an approved home of any foster parent or adoptive parent unless all household members eighteen and one-half (18½) years of age and older, excluding children in foster care, have been checked with the Identification Bureau of the Division of Arkansas State Police to determine if any of the persons have pleaded guilty or nolo contendere to or been found guilty of the offenses listed in this subchapter in compliance with policy and procedures promulgated by the Child Welfare Agency Review Board at a minimum of every two (2) years.

(3)(A) The owner or operator of a child welfare agency shall maintain on file, subject to inspection by the Child Welfare Agency Review Board, evidence that all persons required to be checked with the Identification Bureau of the Division of Arkansas State Police under this subsection have been approved or disqualified in accordance with the rules of the appropriate licensing or certifying agency.

(B) Failure to maintain that evidence on file will be prima facie grounds to revoke the license or church-operated exemption of the owner or operator of the child welfare agency.

(4) All persons required to be checked with the Division of Arkansas State Police under this subsection shall repeat the check at a minimum of every five (5) years, except that adoptive parents who reside in Arkansas shall repeat the check every two (2) years pending court issuance of a final decree of adoption, at which point repeat checks shall no longer be required.

(c)(1) Each of the following persons in a child welfare agency shall have a fingerprint-based criminal background check performed by the Federal Bureau of Investigation in compliance with federal law and regulation to determine if the person has pleaded guilty or nolo contendere to or been found guilty of the offenses listed in this section:

(A) An employee having direct and unsupervised contact with children;

(B) A volunteer having direct and unsupervised contact with children;

(C) An owner having direct and unsupervised contact with children;

(D) A member of the agency's board of directors having direct and unsupervised contact with children;

(E) Foster parents, house parents, and each member of the household eighteen and one-half (18½) years of age and older, excluding children in foster care;

(F)(i) Adoptive parents and each member of the household eighteen and one-half (18½) years of age and older, excluding children in foster care.

(ii) Adoptive parents and each member of the household eighteen and one-half (18½) years of age and older, excluding children in foster care, shall not be required to have a criminal background check performed by the Federal Bureau of Investigation if:

(a) The adoptive parents and each member of the household age eighteen and one-half (18½) years of age and older, excluding children in foster care, have continuously resided in a state for at least five (5) years before the adoption; and

(b) The state-of-residence criminal records check is available; and

(G) An adult working in a childcare institution.

(2)(A)(i) A child in the custody of the department shall not be placed in an approved home of any foster or adoptive parent unless all household members eighteen and one-half (18½) years of age and older, excluding children in foster care, have a fingerprint-based criminal background check performed by the Federal Bureau of Investigation in compliance with federal law and regulation to determine if any of the persons has pleaded guilty or nolo contendere to or been found guilty of the offenses listed in this subchapter.

(ii) A household member who turns eighteen (18) years of age has up to six (6) months from the date of his or her eighteenth birthday to have a background check completed.

(B) The owner or operator of a child welfare agency shall maintain on file, subject to inspection by the Child Welfare Agency Review Board, evidence that all persons required to be checked with the Identification Bureau of the Division of Arkansas State Police under this subsection have been approved or disqualified in accordance with the rules of the appropriate licensing or certifying agency.

(C) Failure to maintain that evidence on file will be prima facie grounds to revoke the license or church-operated exemption of the owner or operator of the child welfare agency.

(d)(1) Each person required to have a criminal records check under this subchapter shall complete a criminal records check form developed by the department and shall sign the form that contains the following under oath before a notary public:

(A) Certification that the subject of the check consents to the completion of the check;

(B) Certification that the subject of the check has not pleaded guilty or nolo contendere to or been found guilty of a crime and if the subject of the check has been convicted of a crime, contains a description of the crime and the particulars of the conviction;

(C) Notification that the subject of the check may challenge the accuracy and completeness of any information in any report and

obtain a prompt determination as to the validity of the challenge before a final determination is made by the Child Welfare Agency Review Board with respect to his or her employment status or licensing status;

(D) Notification that the subject of the check may be denied a license or exemption to operate a child welfare agency or may be denied unsupervised access to children in the care of a child welfare agency due to information obtained by the check that indicates that the subject of the check has pleaded guilty or nolo contendere to or been found guilty of or is under pending indictment for a crime listed in this subchapter; and

(E) Notification that any background check and the results thereof shall be handled in accordance with the requirements of Pub. L. No. 92-544.

(2) The owner or operator of the child welfare agency shall submit the criminal records check form to the Division of Child Care and Early Childhood Education for processing within ten (10) days of hiring the employee or volunteer, who shall remain under conditional employment or volunteerism until the registry check and criminal records checks required under this subchapter are completed.

(3) Nothing in this section shall be construed to prevent the Child Welfare Agency Review Board from denying a license or exemption to an owner or preventing an operator or employee in a child welfare agency from having unsupervised access to children by reason of the pending appeal of a criminal conviction or child maltreatment determination.

(4) In the event a legible set of fingerprints as determined by the Division of Arkansas State Police and the Federal Bureau of Investigation cannot be obtained after a minimum of two (2) attempts by qualified law enforcement personnel, the Child Welfare Agency Review Board shall determine eligibility based upon a name check by the Division of Arkansas State Police and the Federal Bureau of Investigation.

(5)(A) An owner or operator of a child welfare agency shall not be liable during a conditional period of service for hiring any person required to have a background check pursuant to this subchapter who may be subject to a charge of false swearing upon completion of the registry and criminal records check.

(B)(i) Pursuant to this subchapter, false swearing shall occur when a person while under oath provides false information or omits information that the person knew or reasonably should have known was material.

(ii) Lack of knowledge that information is material is not a defense to a charge of false swearing.

(C) For purposes of this subchapter, false swearing is a Class A misdemeanor.

(e)(1) A report of a pleading of guilty or nolo contendere or a finding of guilt to any charge listed in this subsection shall be:

(A) Returned to the Division of Child Care and Early Childhood Education for review; and

(B) Considered regardless of whether or not the record is expunged, pardoned, or otherwise sealed.

(2) A person who is required to have a criminal records check under subdivision (b)(1) or subdivision (c)(1) of this section shall be absolutely and permanently prohibited from having direct and unsupervised contact with a child in the care of a child welfare agency if that person has pleaded guilty or nolo contendere to or been found guilty of any of the following offenses by any court in the State of Arkansas, of a similar offense in a court of another state, or of a similar offense by a federal court, unless the conviction is vacated or reversed:

(A) Abuse of an endangered or impaired person, if felony, § 5-28-103;

(B) Arson, § 5-38-301;

(C) Capital murder, § 5-10-101;

(D) Endangering the welfare of an incompetent person in the first degree, § 5-27-201;

(E) Kidnapping, § 5-11-102;

(F) Murder in the first degree, § 5-10-102;

(G) Murder in the second degree, § 5-10-103;

(H) Rape, § 5-14-103;

(I) Sexual assault in the first degree, § 5-14-124;

(J) Sexual assault in the second degree, § 5-14-125;

(K) Aggravated assault upon a law enforcement officer or an employee of a correctional facility, § 5-13-211, if a Class Y felony; and

(L) Trafficking of persons, § 5-18-103.

(3) Except as provided under subdivision (f)(1) of this section, a person who is required to have a criminal records check under subdivision (b)(1) or subdivision (c)(1) of this section shall not be eligible to have direct and unsupervised contact with a child in the care of a child welfare agency if that person has pleaded guilty or nolo contendere to or been found guilty of any of the following offenses by a court in the State of Arkansas, of a similar offense in a court of another state, or of a similar offense by a federal court, unless the conviction is vacated or reversed:

(A) Criminal attempt, § 5-3-201, to commit any offenses in subdivision (e)(2) or subdivision (e)(3) of this section;

(B) Criminal complicity, § 5-3-202, to commit any offenses in subdivision (e)(2) or subdivision (e)(3) of this section;

(C) Criminal conspiracy, § 5-3-401, to commit any offenses in subdivision (e)(2) or subdivision (e)(3) of this section;

(D) Criminal solicitation, § 5-3-301, to commit any offenses in subdivision (e)(2) or subdivision (e)(3) of this section;

(E) Assault in the first, second, or third degree, §§ 5-13-205 — 5-13-207;

(F) Aggravated assault, § 5-13-204;

(G) Aggravated assault on a family or household member, § 5-26-306;

(H) Battery in the first, second, or third degree, §§ 5-13-201 — 5-13-203;

(I) Breaking or entering, § 5-39-202;

(J) Burglary, § 5-39-201;

(K) Coercion, § 5-13-208;

(L) Computer crimes against minors, § 5-27-601 et seq.;

(M) Contributing to the delinquency of a juvenile, § 5-27-220;

(N) Contributing to the delinquency of a minor, § 5-27-209;

(O) Criminal impersonation, § 5-37-208;

(P) Criminal use of a prohibited weapon, § 5-73-104;

(Q) Communicating a death threat concerning a school employee or student, § 5-17-101;

(R) Domestic battery in the first, second, or third degree, §§ 5-26-303 — 5-26-305;

(S) Employing or consenting to the use of a child in a sexual performance, § 5-27-402;

(T) Endangering the welfare of a minor in the first or second degree, §§ 5-27-205 and 5-27-206;

(U) Endangering the welfare of an incompetent person in the second degree, § 5-27-202;

(V) Engaging children in sexually explicit conduct for use in visual or print media, § 5-27-303;

(W) False imprisonment in the first or second degree, §§ 5-11-103 and 5-11-104;

(X) Felony abuse of an endangered or impaired person, § 5-28-103;

(Y) Felony interference with a law enforcement officer, § 5-54-104;

(Z) Felony violation of the Uniform Controlled Substance Act, § 5-64-101 et seq., § 5-64-201 et seq., § 5-64-301 et seq., § 5-64-401 et seq., and § 5-64-501 et seq.;

(A)(A) Financial identity fraud, § 5-37-227;

(B)(B) Forgery, § 5-37-201;

(C)(C) Incest, § 5-26-202;

(D)(D) Interference with court ordered custody, § 5-26-502;

(E)(E) Interference with visitation, § 5-26-501;

(F)(F) Introduction of controlled substance into the body of another person, § 5-13-210;

(G)(G) Manslaughter, § 5-10-104;

(H)(H) Negligent homicide, § 5-10-105;

(I)(I) Obscene performance at a live public show, § 5-68-305;

(J)(J) Offense of cruelty to animals, § 5-62-103;

(K)(K) Offense of aggravated cruelty to a dog, cat, or equine, § 5-62-104;

(L)(L) Pandering or possessing a visual or print medium depicting sexually explicit conduct involving a child, § 5-27-304;

(M)(M) Permanent detention or restraint, § 5-11-106;

(N)(N) Permitting abuse of a minor, § 5-27-221;

(O)(O) Producing, directing, or promoting a sexual performance by a child, § 5-27-403;

- (P)(P) Promoting obscene materials, § 5-68-303;
- (Q)(Q) Promoting obscene performance, § 5-68-304;
- (R)(R) Promoting prostitution in the first, second, or third degree, §§ 5-70-104 — 5-70-106;
- (S)(S) Prostitution, § 5-70-102;
- (T)(T) Public display of obscenity, § 5-68-205;
- (U)(U) Resisting arrest, § 5-54-103;
- (V)(V) Robbery, § 5-12-102;
- (W)(W) Aggravated robbery, § 5-12-103;
- (X)(X) Sexual extortion, § 5-14-113;
- (Y)(Y) Sexual solicitation, § 5-70-103;
- (Z)(Z) Sexual offenses, § 5-14-101 et seq.;
- (A)(A)(A) Simultaneous possession of drugs and firearms, § 5-74-106;
- (B)(B)(B) Soliciting money or property from incompetents, § 5-27-229;
- (C)(C)(C) Stalking, § 5-71-229;
- (D)(D)(D) Terroristic act, § 5-13-310;
- (E)(E)(E) Terroristic threatening, § 5-13-301;
- (F)(F)(F) Theft by receiving, § 5-36-106;
- (G)(G)(G) Theft of property, § 5-36-103;
- (H)(H)(H) Theft of public benefits, § 5-36-202;
- (I)(I)(I) Theft of services, § 5-36-104;
- (J)(J)(J) Transportation of minors for prohibited sexual conduct, § 5-27-305;
- (K)(K)(K) Unlawful discharge of a firearm from a vehicle, § 5-74-107; and
- (L)(L)(L) Voyeurism, § 5-16-102.

(4) A former or future law of this or any other state or of the federal government that is substantially equivalent to one (1) of the offenses listed in subdivision (e)(3) of this section shall be considered as prohibiting under subdivisions (e)(2) and (3) of this section.

(f)(1) A person who is required to have a criminal records check under subdivision (b)(1) or subdivision (c)(1) of this section who has pleaded guilty or nolo contendere to or been found guilty of any of the offenses listed in subdivision (e)(3) of this section shall be absolutely disqualified from being an owner, operator, volunteer, foster parent, adoptive parent, member of a child welfare agency's board of directors, or employee in a child welfare agency during the period of the person's confinement, probation, or parole supervision unless the conviction is vacated or reversed.

(2) Except as provided under subdivision (f)(3) of this section, a person who has pleaded guilty or nolo contendere to or been found guilty of one (1) of the offenses listed in subdivision (e)(3) of this section shall not work in a child welfare agency unless:

- (A) The date of a plea of guilty or nolo contendere, or the finding of guilt for a misdemeanor offense is at least five (5) years from the date of the records check; and

(B) There have been no criminal convictions or pleas of guilty or nolo contendere of any type or nature during the five-year period preceding the background check request.

(3)(A) Except as provided under subdivision (f)(1) of this section, a person who is required to have a criminal records check under subdivision (b)(1) or subdivision (c)(1) of this section who has pleaded guilty or nolo contendere to or been found guilty of any of the offenses listed in subdivision (e)(3) of this section shall be presumed to be disqualified to be an owner, operator, volunteer, foster parent, adoptive parent, member of a child welfare agency's board of directors, or employee in a child welfare agency after the completion of his or her term of confinement, probation, or parole supervision unless the conviction is vacated or reversed.

(B) An owner, operator, volunteer, foster parent, adoptive parent, household member of a foster parent or adoptive parent, member of any child welfare agency's board of directors, or an employee in a child welfare agency shall not petition the Child Welfare Agency Review Board unless the agency supports the petition, which can be rebutted in the following manner:

(i) The applicant shall petition the Child Welfare Agency Review Board to make a determination that the applicant does not pose a risk of harm to any person;

(ii) The applicant shall bear the burden of making such a showing; and

(iii)(a) The Child Welfare Agency Review Board may permit an applicant to be an owner, operator, volunteer, foster parent, adoptive parent, member of an agency's board of directors, or an employee in a child welfare agency notwithstanding having pleaded guilty or nolo contendere to or been found guilty of an offense listed in this section upon making a determination that the applicant does not pose a risk of harm to any person served by the facility.

(b) In making a determination, the Child Welfare Agency Review Board shall consider:

(1) The nature and severity of the crime;

(2) The consequences of the crime;

(3) The number and frequency of the crimes;

(4) The relation between the crime and the health, safety, and welfare of any person, such as the:

(A) Age and vulnerability of the crime victim;

(B) Harm suffered by the victim; and

(C) Similarity between the victim and the persons served by a child welfare agency;

(5) The time elapsed without a repeat of the same or similar event;

(6) Documentation of successful completion of training or rehabilitation related to the incident; and

(7) Any other information that relates to the applicant's ability to care for children or is deemed relevant.

(c) The Child Welfare Agency Review Board's decision to disqualify a person from being an owner, operator, volunteer, foster parent,

adoptive parent, member of a child welfare agency's board of directors, or an employee in a child welfare agency under this section shall constitute the final administrative agency action of the Child Welfare Agency Review Board and is not subject to review.

(d) Information obtained from the criminal records check and the national fingerprint criminal background checks is confidential and shall not be disclosed by the department except:

(1) To the members of the Child Welfare Agency Review Board during a Child Welfare Agency Review Board meeting only if no redisclosure by a Child Welfare Agency Review Board member occurs and all copies shared with the Child Welfare Agency Review Board members are returned to the department; or

(2) To the applicant and his or her attorney during a Child Welfare Agency Review Board meeting only if no redisclosure by the applicant or his or her attorney occurs and all copies shared with the applicant and his or her attorney are returned to the department.

History. Acts 1997, No. 1041, § 9; 664, § 5; 2019, No. 318, §§ 1-3; 2021, No. 1999, No. 328, § 1; 2001, No. 1211, § 2; 269, §§ 2-4.
2003, No. 1087, § 11; 2005, No. 1766, § 3;
2005, No. 1923, § 1; 2007, No. 634, § 3;
2009, No. 723, §§ 8-10; 2011, No. 522,
§§ 21, 22; 2011, No. 570, § 71; 2011, No.
591, § 11; 2013, No. 1275, § 8; 2015, No.
545, § 2; 2015, No. 547, § 3; 2015, No.
861, §§ 3, 4; 2017, No. 209, § 5; 2017, No.
367, § 10; 2017, No. 389, § 9; 2017, No.

Amendments. The 2021 amendment added (a)(1)(G) and (b)(1)(G); in the introductory language of (c)(1), deleted "who has not lived in Arkansas continuously for the past five (5) years" following "child welfare agency" and substituted "section" for "subchapter"; and added (c)(1)(G).

CHAPTER 31

YOUTH SERVICES

SUBCHAPTER.

5. SCIENCE OF READING.

SUBCHAPTER 5 — SCIENCE OF READING

SECTION.

9-31-503. Rulemaking authority —
Implementation process.

9-31-501. Dyslexia screening — Intervention services.

Publisher's Notes. The provision set out as an A.C.R.C. note in the bound volume now is codified as § 9-31-503, as amended by Acts 2021, No. 485, § 1.

9-31-502. Requirements for educators — Science of reading.

Publisher's Notes. The provision set out as an A.C.R.C. note in the bound volume now is codified as § 9-31-503, as amended by Acts 2021, No. 485, § 1.

9-31-503. Rulemaking authority — Implementation process.

The Division of Youth Services shall promulgate rules for implementing this subchapter, and may consult with the Division of Elementary and Secondary Education and make use of Division of Elementary and Secondary Education resources in order to implement this subchapter.

History. Acts 2019, No. 1089, § 3; 2021, No. 485, § 1.

Publisher's Notes. This section, enacted in 2019, previously appeared as a note under §§ 9-31-501 and 9-31-502 and

was amended and codified as § 9-31-503 in 2021.

Amendments. The 2021 amendment added "Implementation process" in the section heading; and rewrote the section.

